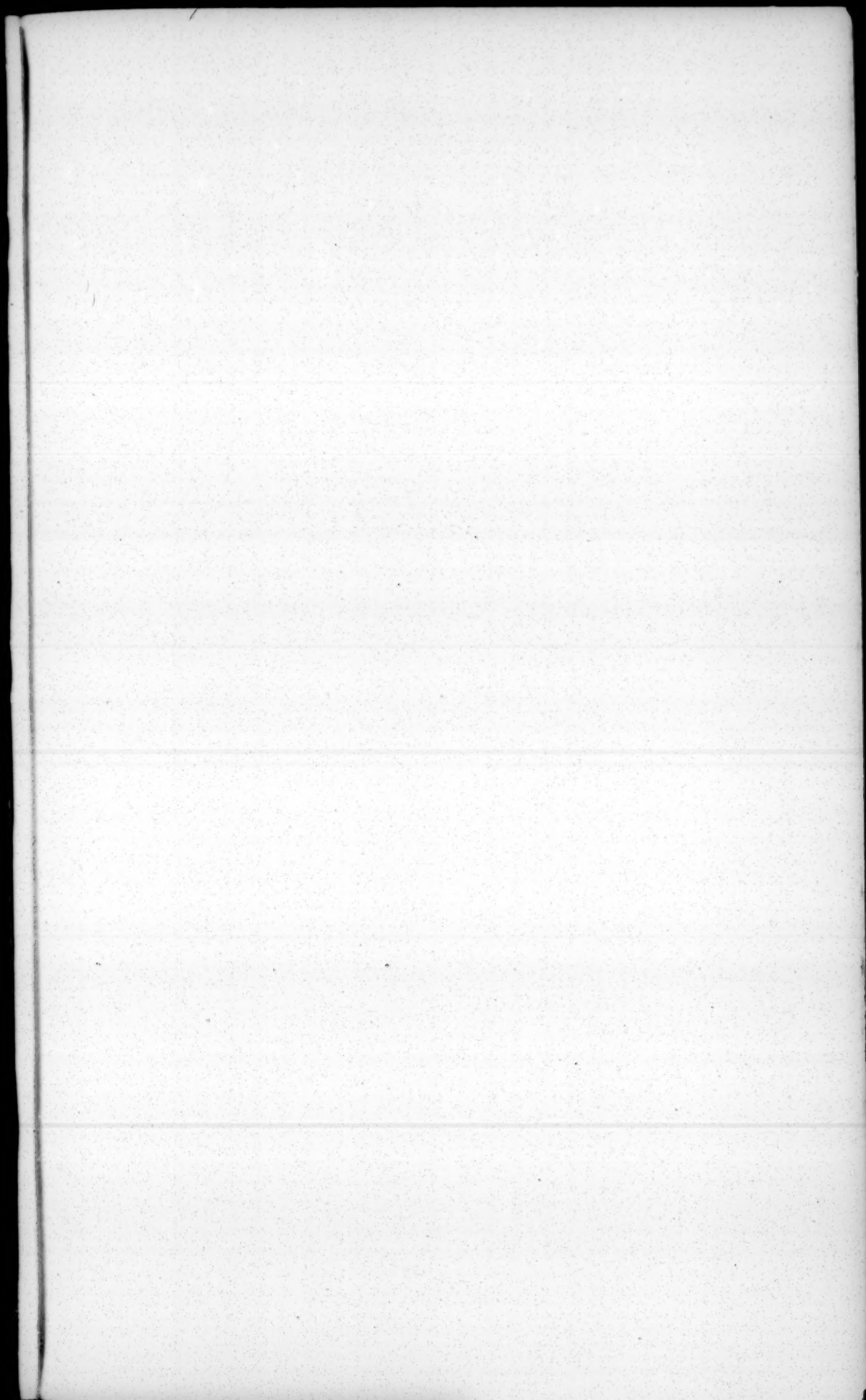
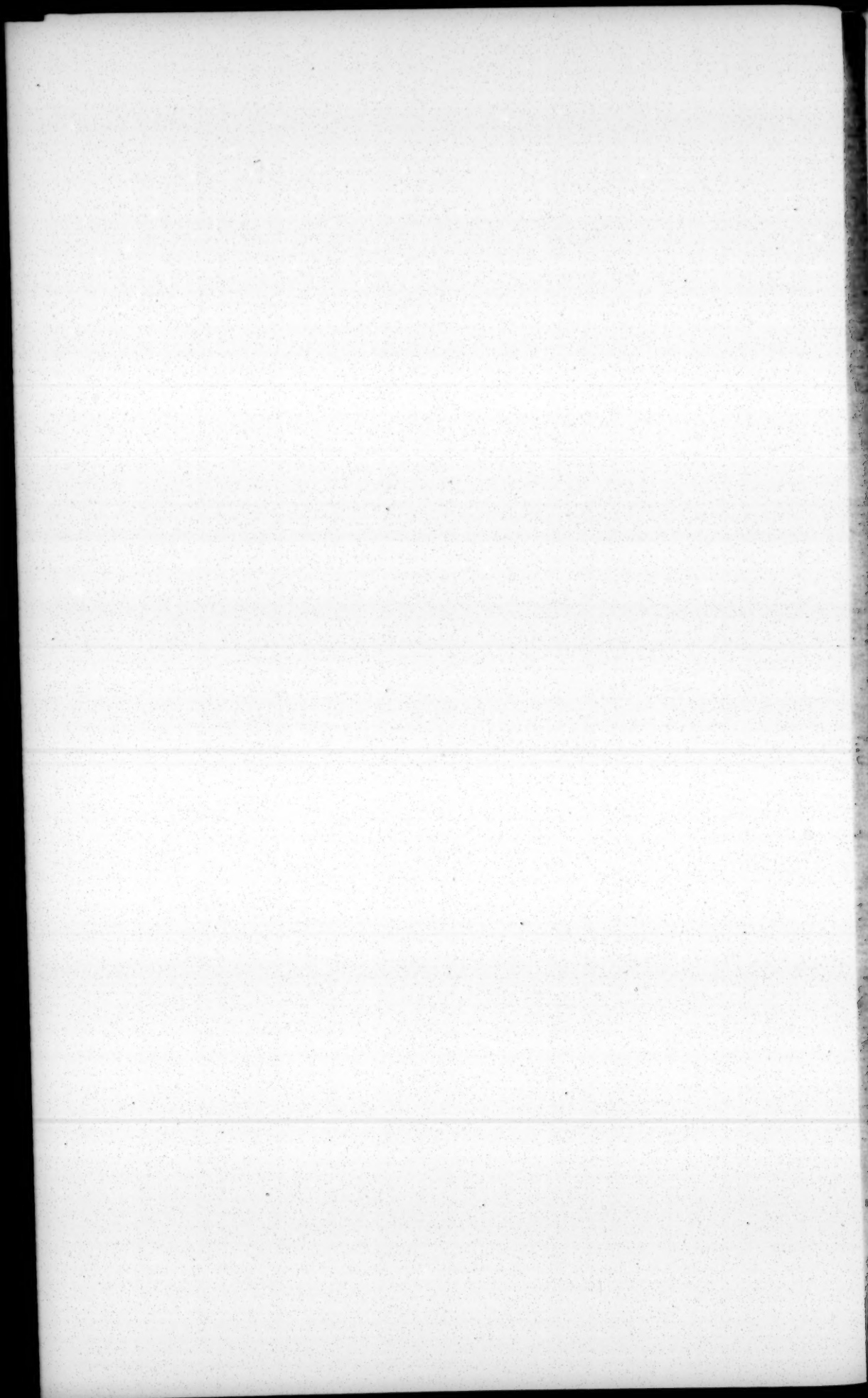


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J. W. H.
6/15 6/13

THE
T R I A L
OF THE HONOURABLE
AUGUSTUS KEPPEL,

Admiral of the Blue Squadron,

FOR A
Charge of Misconduct and Neglect of Duty,
EXHIBITED AGAINST HIM
By Vice-Admiral Sir Hugh Palliser.

WITH AN
INTRODUCTION,
Including a Recapitulation of those Events that gave Rise to
so extraordinary a Charge, with all the necessary Papers
relative thereto.

TO WHICH IS ADDED,
A DICTIONARY of all the SEA TERMS
used in the Course of the Work.

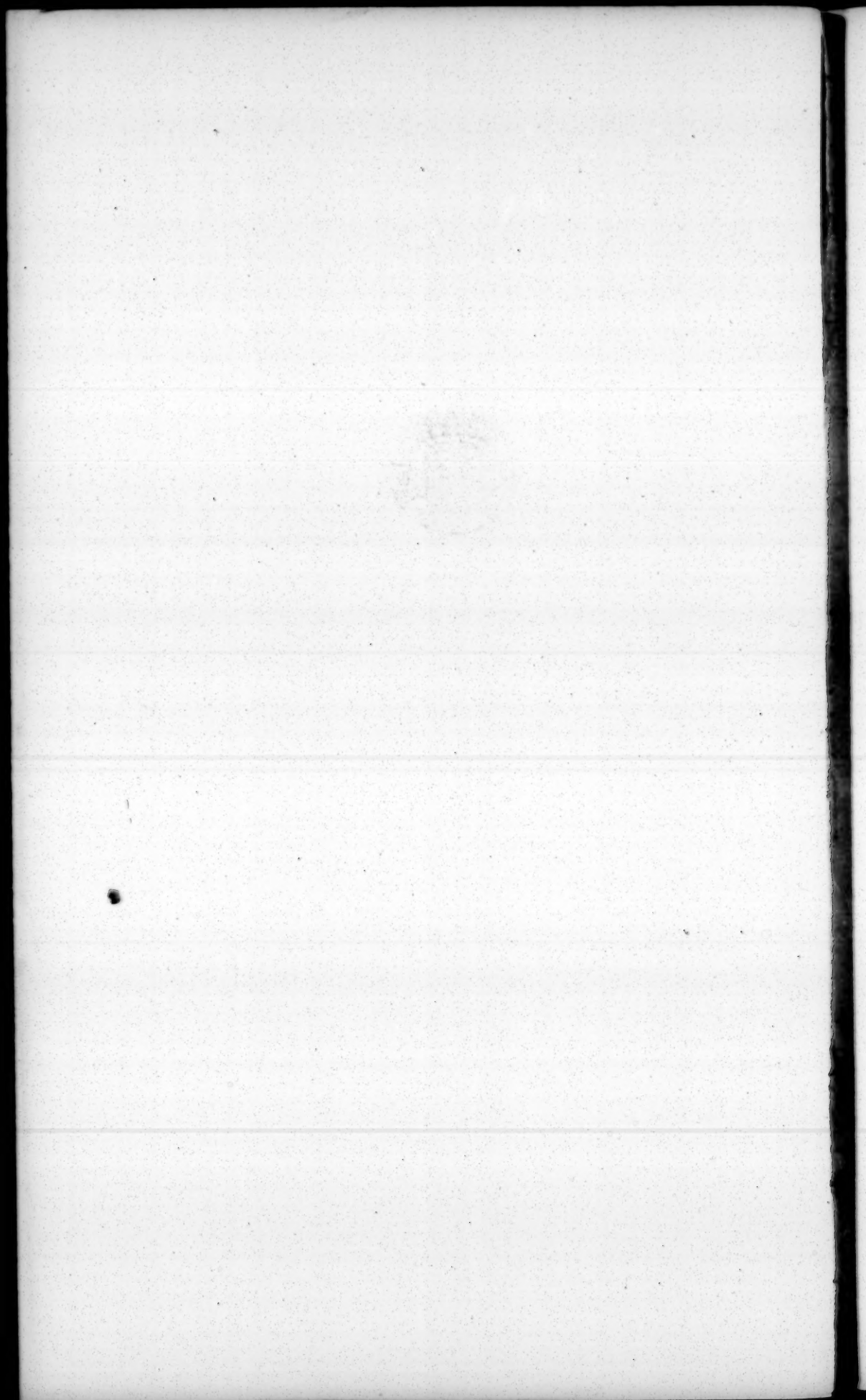
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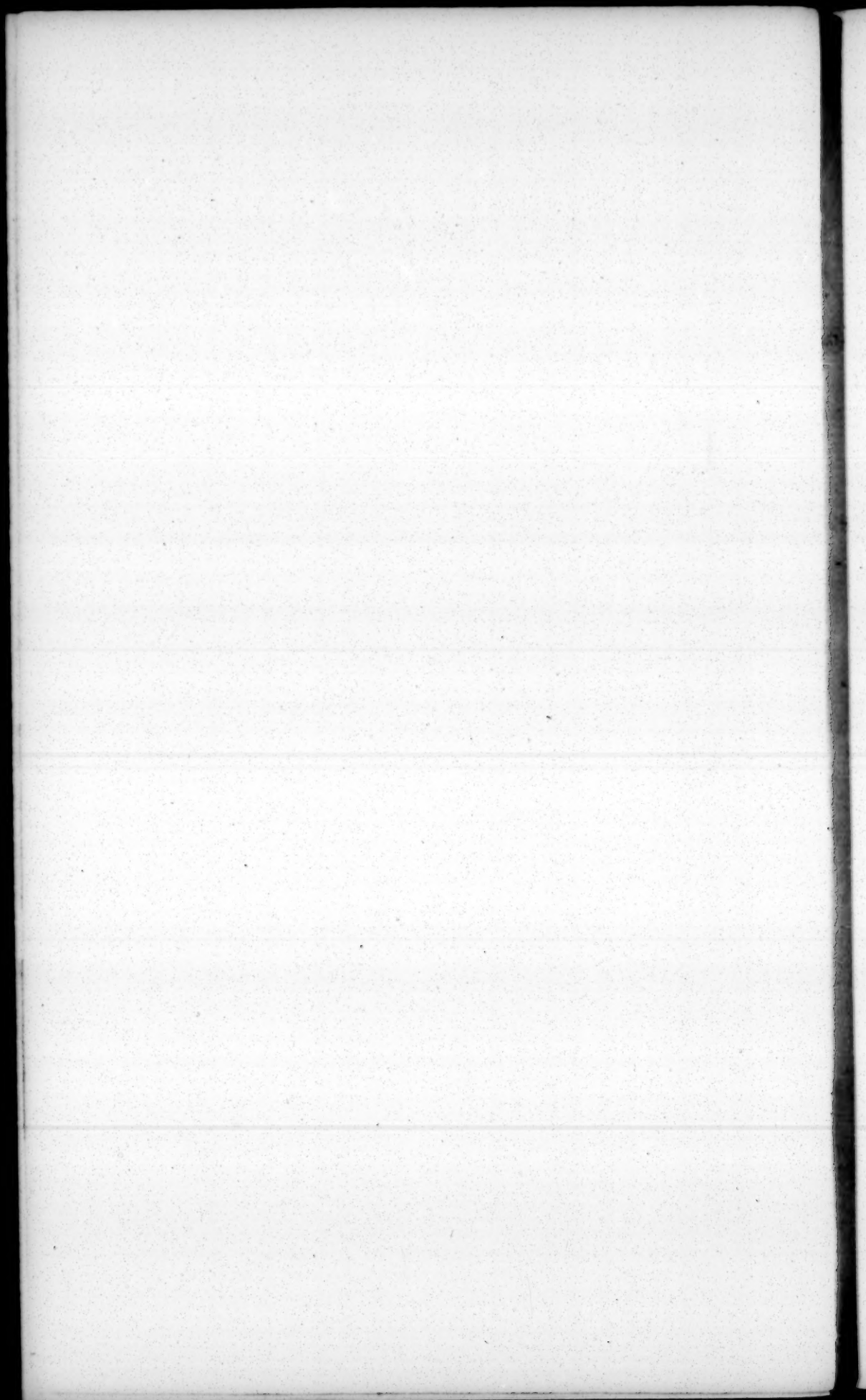
ADMIRAL MONTAGUE.

S I R,

SO long as the Trial of *Admiral Keppel* shall be remembered, the Name of MONTAGUE will be admired. The very considerable Pains you took to examine into the Truth of Facts, and, without the Chicanery of Law, to discriminate right from wrong, will endear you to every Seaman and real Friend of his Country.

I beg leave to inscribe the following Pages to you, as a small Token of my Respect.

The Editor.



INTRODUCTION.

TO render this Trial of more value than a mere temporary publication, we think it necessary to lay before our readers a short historical account of the expedition which gave rise to so extraordinary an occurrence.

It will be needless to make a recapitulation of our naval transactions during our unhappy contest with America previous to this, in which nothing but expence and disgrace had been incurred, instead of those laurels heretofore obtained, and always expected, by the British arms. The secret influence of France had been strongly urged by many Lords and Gentlemen in the Minority, but constantly disclaimed by the Ministry, until their open treaty with America, and their hostile intentions towards us, became too glaring to be glossed over. A fleet was now said to be ready, that was sufficient to oppose the hostilities of a world united; but the Admiral's description of that fleet, in his defence, will be an authentic testimony how little regard is to be paid to men who have too long been trusted with the nearest concerns of the nation.

At length, however, Admiral Keppel, who was appointed to this command, was sent out with a fleet, neither in good condition, nor properly supplied with men. This was an expedition in which no laurels could be won to adorn his own head, or success obtained to his country. The enemy's fleet consisted of thirty-two ships of the line, besides an incredible number of frigates; while the English consisted only of twenty sail of the line, and a few frigates.

The people were unacquainted with the strength of the French fleet, and had formed great expectations from the known and approved conduct and courage of Mr. Keppel; something like a ray of hope had cheered them from an universal despondence, which a train of ill success had produced; they hoped to recover that honour from the French, which they had lost in their dispute with the Americans.

We have every reason to think Admiral Keppel was no favourite at Court ; and that when he went out to fight the enemies of his country, he left many of his own with the King ; but we can adduce no reason why our navy was not on a respectable footing, or why the Honourable Admiral was sent out with so disproportionate a force on such an expedition, in which the interest of the nation was so much concerned.

We have heard it termed, an insult to the nation, and a traitorous abuse of a delegated trust ; for if the Admiral had fought and been unsuccessful, by his own confession, we had lost the empire of the seas ; and perhaps, as some apprehend, it would have been the fault of the enemy if, at the same time, they had not made a descent upon our island, and even rendered us tributary to France.

The event of the first expedition may be learnt from the following Letters, which, being published in the London Gazette, must be authentic.

Admiralty-Office, June 24, 1778.

THE three letters from the Hon. Admiral Keppel to Mr. Stephens, secretary to the Admiralty, of which the following are copies and extracts, were received this afternoon at this office.

“ SIR,

Victory at Sea, June 18, 1778.

“ A little before twelve o'clock yesterday, the fleet being in a line of battle, steering S. S. W. the wind at west, and the Lizard bearing N. 44, 00 W. distant 25 miles, we observed two ships seemingly reconnoitring the fleet, with two tenders accompanying them ; I immediately directed the whole fleet to chace, and between five and six in the evening the Milford had got close along-side the leeward-most ship, a large French frigate ; I made the signal for the ships chasing to bring down their chace to me, which Sir William Burnaby could not, by civil words, get the French officer to allow him to do ; but upon the Hector's drawing near upon her, and firing a gun shotted, she stood to her, and the Hector then made sail with her towards the fleet. The other French ship was closely pursued by the Arethusa, and Alert cutter, and, at some distance a-stern of them, the Valiant and Monarch.

“ I am not able to inform their Lordships in this letter, relative to that chace, more than that an officer got to me this morning from the Valiant, who had been in the boat the whole night ; his captain directed him to inform me, that he should have returned agreeable to the signal to leave off chace, but that he observed the French frigate had given battle to the Arethusa.

“ At nine o'clock last night I sent Sir Charles Douglas to leeward to the Hector and America, to let their captains know, it was my orders

orders they brought the French frigate under the Victory's stern; and Sir Charles Douglas was charged from me to express every civility to the French captain, and to inform him that I should see him when the ships and frigate got up to the fleet in the morning; in the mean time he was also to attend the frigate unmolested up to me; but, to my astonishment, this morning about nine o'clock, I observed the French ship seemingly going upon the other tack.

"One of the ships that was attending her fired across her, which was immediately followed by the French frigate's discharging her whole broad-side and musquetry into the America, at the very moment Lord Longford was upon the gun-wale, talking to the French captain in the most civil strain; several of the shot struck the America, and wounded four of her people: the French captain then struck his colours; his behaviour merited the fire of the America, but Lord Longford's humanity and prudence prevailed, much to his credit, over his resentment.

"I hope I have not done improperly in sending the frigate into Plymouth: The circumstance of her behaviour, and the other French frigate giving battle to the Arethusa, has been a justification to myself for seizing her and sending her into port.

"I am, Sir, your most obedient and very humble servant,

A. KEPPEL.

"P. S. The French frigate is called the *Licorne*, of 32 guns, and 230 men."

*"Victory, at Sea, June 20, at noon, the Lizard,
N. 37. 00 E. 19 leagues.*

"SIR,

"BEFORE noon of yesterday we saw the Valiant and Monarch, who had chased from the fleet on the 17th, coming down; the Valiant with a crippled ship in tow, which we soon perceived was the Arethusa, with her main-mast gone, and much shattered in other respects.

"The Arethusa had come up with her chace on the evening of the 17th; she proved a large French frigate with heavy metal, (the Belle Poule;) Capt. Marshall requested of the French Captain to bring to, and informed him, he had orders to conduct him to his Admiral, who wished to speak to him; both which requests the French officer peremptorily refused to comply with; Captain Marshall then fired a shot across the frigate, upon which the French Captain instantaneously fired his whole broadside into the Arethusa, who was at that time very close along-side, which brought on an action on both sides, which continued for upwards of two hours; the Arethusa being much shattered in her masts, sails, and rigging, and there being very little wind to govern her, she was thrown in such a situation as not to be able to get her head towards the French ship, notwithstanding Captain Marshall's utmost endeavours so to do. The French ship's head being in with the land, and getting

her fore-sail set, she stood into a small bay, where boats at day light came out, and towed her into safety.

"Capt. Marshall appears to have conducted himself in the whole of this matter with the greatest spirit and gallantry, and speaks with great satisfaction of the behaviour of his officers and ships company. The *Arethusa* had 3 men killed, and 36 wounded; the loss of the French must be considerable.

"I must not omit in this relation, to acquaint their Lordships, that Capt. Fairfax, in the *Alert* cutter, has had his share in the business; he got along-side of a schooner of 10 carriage guns and 10 swivels, that attended the frigate that engaged the *Arethusa*; upon his requesting the commander of her to stand to the fleet, he made him answer, that he should do as the frigate did; and, upon the frigate's firing upon the *Arethusa*, fired his guns into the *Alert*; Capt. Fairfax immediately run on board of him; and they continued in that situation in close fight, upwards of an hour, when the French vessel surrendered. Captain Fairfax killed him 5 men, and mortally wounded 7; the *Alert* had 4 men wounded, two of them, it is apprehended, mortally.

"Several French merchant ships passed through the fleet yesterday unmolested: I did not think proper in anywise to interrupt them in their commerce. Ushant was then in sight from the mast-head."

"SIR,

Victory, at Sea, June 20, 1778.

"EARLY in the morning of the 18th, a ship in the N W quarter was seen standing into the fleet, but soon hauled away: The *Foudroyant*, *Courageaux*, and *Robust*, were sent in pursuit of her; and having repaired, as well as time would permit, the *Milford's* damages, which she received by the French frigate's having, while in conversation, sheered on board her, she was likewise sent in chase. In the morning of the 19th, the *Proserpine* had joined, whom I also directed to chase; very light winds, and easterly: Before twelve, the frigates and other ships were drawn close up with the chase, a French frigate, and the signal being made to the ships to bring the chase into the fleet, she was brought in accordingly, the French officer having no means whatever to avoid what has happened to him. From the behaviour of the French frigate the *Licorne*, on the 18th in the morning, I judged it my duty to detain this ship likewise. I directed Capt. Hood, of the *Robust*, to take the officers out of the ship, and distribute the crew among the ships with him; instructing him to signify to the French Captain, that I was under the necessity of taking this step, from the extraordinary conduct of the Captain of the *Licorne*; at the same time recommended to Capt. Hood to take care, that nothing but the civilest treatment should pass towards the French officers and their people, and every thing taken care of on board the frigate. She is called the *Pallas*, of 32 guns and 220 men; and, as well as could be learnt, had been eight days from Brest on a cruize. I am, Sir, your most obedient and very humble servant,

"A. KEPPEL."

For further observations, and more particular remarks on this account, we refer our readers to the Admiral's defence; only execrating the man who dared to send out twenty ill-conditioned ships against thirty-two.

To the immortal honour of the Admiral, he dared to return to Plymouth to refit, and to be reinforced. The insults he endured on his return, he pathetically describes himself; but at last obtaining thirty ships of the line, he sailed from St. Helen's the 19th of July: And we refer to his noble Defence for an account of his conduct with them, giving an account of the engagement itself from the Gazette of the day.

Admiralty-Office, August 2, 1778.

Captain Faulknor, of his Majesty's ship the *Victory*, arrived at this office yesterday in the afternoon, with a letter from the Hon. Augustus Keppel, Admiral of the Blue, and commander in chief of his Majesty's ships employed to the Westward, to Mr. Stephens, of which the following is a copy:

"SIR,

Victory, at Sea, July 30, 1778.

"MY letters of the 23d and 24th instant, by the *Peggy* and *Union* cutters, acquainted you, for their Lordship's information, that I was in pursuit, with the King's fleet under my command, of a numerous fleet of French ships of war.

"From that time to the 27th, the winds constantly in the S. W. and N. W. quarters, sometimes blowing strong, and the French fleet always to windward going off, I made use of every method to close in with them that was possible, keeping the King's ships at the same time collected, as much as the nature of a pursuit would admit of, and which became necessary from the cautious manner the French proceeded in, and the disinclination that appeared in them to allow of my bringing the King's ships close up to a regular engagement: This left but little other chance of getting in with them, than seizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the King's fleet under my command leading up with, and closing with, their centre and rear.

"The French began firing upon the head-moſt of Vice-Admiral Sir Robert Harland's division, and the ships with him, as they led up; which cannonade the leading ships and the Vice-Admiral soon returned, as did every ship as they could close up: The chase had occasioned their being extended, nevertheless they were all soon in battle.

"The fleets, being upon different tacks, passed each other very close: The object of the French seemed to be the disabling the King's ships in their masts and sails, in which they so far succeeded as to prevent many of the ships of my fleet being able to follow me
when

when I wore to stand after the French fleet; this obliged me to wear again, to join those ships, and thereby allowed of the French forming their fleet again, and range it in a line to leeward of the King's fleet, toward the close of the day; which I did not discourage, but allowed of their doing it without firing upon them, thinking they meant handsomely to try their force with us the next morning; but they had been so beaten in the day, that they took the advantage of the night to go off.

"The wind and weather being such that they could reach their own shores before there was any chance of the King's fleet getting up with them, in the state the ships were in, in their masts, yards, and sails, left me no choice of what was proper and advisable to do.

"The spirited conduct of Vice-Admiral Sir Robert Harland, Vice-Admiral Sir Hugh Palliser, and the Captains of the fleet, supported by their officers and men, deserves much commendation.

"A list of the killed and wounded is herewith inclosed.

"I send Capt. Faulknor, Captain of the Victory, with this account to their Lordships, and am, Sir, &c.

"A. KEPPEL."

List of men killed and wounded in the Action with the French Fleet, the 27th of July, 1778.

Ships Names	Killed	Wounded	Ships Names	Killed	Wounded
Monarch	2	9	Prince George	5	15
Exeter	4	6	Vengeance	4	18
Queen	1	2	Worcester	3	5
Shrewsbury	3	6	Elizabeth		7
Berwick	10	11	Defiance	8	17
Stirling-Castle	2	11	Robuste	5	17
Courageux	6	13	Formidable	16	49
Thunderer	2	5	Ocean	2	18
Vigilant	2	3	America	1	17
Sandwich	2	20	Terrible	9	21
Valiant	6	26	Egmont	12	19
Victory	11	24	Ramillies	12	16
Foudroyant	5	18	Total	133	373

No sooner was this account published in the Gazette, than a general, though a silent murmur of discontent ran through all ranks of people. The strength of each fleet was nicely examined, and they thought there was nothing of consequence done, for which the nation had reason to rejoice. They would not acknowledge, or they did not recollect, the protection he had afforded to our trade, that, though no brilliant victory had been gained, the advantages had been superior to one; in the safe return of the East and West-India fleets, which, but for the Admiral's care, must have fallen into the hands of the enemy.

The

The expectations of the people had been raised to the highest pitch; and, overlooking the good really and substantially obtained, had sunk into disappointment: They wished for nothing less than the entire destruction of the French fleet,* and did not doubt

* The following is an accurate List of the Ships, Guns, and Men, of the English and French Fleets, under the command of Admiral Keppel, and the Duc de Chartres, as laid before the Court-Martial.

The English Fleet, which sailed from St. Helen's July 19.

Frigates.	Rate.	Ships.	Commanders.	Guns.	Men.	
	3	Monarch,	Capt. Rowley,	74	600	Vice-Admiral of the Fleet.
		Hector,	Sir J. Hamilton, Bart.	74	600	
		Centaur,	Capt. Crosby,	74	600	
		Exeter,	Nott,	64	500	
	2	Duke,	Brereton,	90	750	
Fox, Capt.		Queen,	{ Sir Robert Harland, }	90	772	Admiral of the Fleet.
Windsor.			{ Capt. Prescott, }			
	3	Shrewsbury,	Ross,	74	600	
		Cumberland,	Peyton,	74	600	
		Berwick,	Hon. Keith Stewart,	74	600	
		Stirling Castle,	Sir Charles Douglas,	64	500	
	3	Courageux,	Rt. H. Ld. Mulgrave,	74	600	Admiral of the Fleet.
		Thunderer,	Hon. Capt. Walsingham	74	600	
Arethusa,		Vigilant,	Capt. Kingsmill,	64	500	
Capt.	2	Sandwich,	Edwards,	90	750	
Marshall.	3	Valiant,	Hon. Lev. Gower,	74	650	
Proserpine,			Hon. Aug. Keppel,			Admiral of the Fleet.
Capt.			R. Adm. Campbell,	100	894	
Sutton.	1	Victory,	{ Capt. Faulknor, }			
			Jervis,	80	650	Admiral of the Fleet.
Two Fire-	3	Foudroyant,	Sir J. Lindsay, K. B.	90	750	
ships.	2	Prince George,	Capt. Macbride,	64	500	
	3	Bienfaissant,	Clement,	74	600	
		Vengeance,				
	3	Worcester,	Capt. Robinson,	64	500	Vice-Admiral of the Fleet.
		Elizabeth,	Hon. F. Maitland,	74	600	
		Defiance,	Capt. Goodall,	64	500	
		Robust,	Capt. Hood,	74	600	
			Sir H. Palliser, Bart. }			
Milford,	2	Formidable,	{ Capt. Bazely, }	90	772	Vice-Admiral of the Fleet.
Sir W.			Capt. Laforey,	90	750	
Burnaby.		Ocean,	Rt. H. Lord Longford	64	500	
	3	America,	Sir R. Bickerton, Bt.	74	600	
		Terrible,	Capt. Allen,	74	600	
		Egmont,	Capt. Digby,	74	600	
		Ramillies,				
					22-8	18678
						4 List

doubt but that their wishes would have been gratified: They were displeased, and, consequently, began to find fault. Somebody was to blame: Admiral Keppel's good character screened him from censure, or, at least, from any that has come to our knowledge. Ministry were represented as having given improper orders; and these orders were not allowed by the Admiralty to be produced:—But would the noble Keppel have gone to sea with orders he could not from his heart approve?—No!—he had ample power to act as he thought proper.

Sir Hugh Palliser, a Lord of the Admiralty, &c. and the confidential friend of the Earl of Sandwich, who presided at that board, became the object of severest reprehension: He was accused of misbehaviour and disobedience; and the following charge appeared in the General Advertiser of the 15th of Oct.

“THE principal cause of Mr. Keppel's not re-attacking the French at half past three in the afternoon, (being at that time totally

A List of the French Ships of the Line, that sailed from Brest in July.

Ships.	Guns.	Men.	Ships.	Guns.	Men.
Le Bretagne, —	116	1600	Le Artisan, —	74	800
La Ville de Paris, —	94	1200	Le Diadem, —	74	800
Le Saint Esprit, —	82	1000	Le Bien Aime, —	64	600
La Couronne, —	82	1000	Le Solitaire, —	64	600
*Le Duc de Bourgogne	82	1000	Le St. Michael, —	64	600
Le Robuste, —	74	800	*L'Alexandre, —	64	600
L'Orient, —	74	800	Le Reflexe, —	64	600
Le Glorieux, —	74	800	Le Rolande, —	64	600
Le Conquerant, —	74	800	L'Evelie, —	64	600
Le Fendant, —	74	800	Le Sphynx, —	64	600
Le Magnifique, —	74	800	Le Vengeur, —	64	600
Le Partmere, —	74	800	L'Actionnaire, —	64	600
L'Intrepide, —	74	800	L'Indien, —	64	600
L'Actif, —	74	800	Le Triton, —	64	600
Le Zodiaque, —	74	800	L'Amphion, —	50	400
Le Dauphin Royal, —	74	800	Le Fier, —	50	400

2286 24200

N. B. The Duc de Bourgogne and Alexandre were not present on the 27th of July, the day of the engagement, and therefore their men and guns ought to be deducted from the above list, viz.

L'Duc de Bourgogne, —	—	82	1000	}	146	1600
L'Alexandre, —	—	64	600			
		146	1600			
					2140	22600

totally refitted from the damages sustained in the morning) was Sir H—— P——'s not joining him, agreeable to signal to form the line, he being at that time four miles to windward with his division. Mr. Keppel, observing a non-compliance, made other signals for the respective ships of Sir H——'s division to bear down to him, which in complying with, Sir H—— called them back under his wake. Capt. Laforey, of the Ocean, distressed how to act in consequence of this counter order, sailed up to Sir H——, to ask whom he was to obey. Mr. Keppel, still observing that division continuing to windward, and neither of them obeying the signal, made one for the Fox, Capt. Windsor, to come to him, and desired him to go with his compliments to Sir H——, to inform him that his signal had been unremittedly kept up for him and his division to form the line; he supposed they did not see it, as they had not complied with it, and that they only waited for him and his division's coming down, to renew the action. It was night before the division did come down, so the occasion was lost, by the French disappearing next morning. Mr. Keppel's situation is not to be expressed, when he found himself defeated in the fair prospect he had. These facts will appear in every log-book in the fleet; so that, if an enquiry into this affair was to take place, his conduct will bear the strictest scrutiny, as hitherto no visible reason has appeared as an excuse in Sir H—— P—— for not complying. Sir Robert Harland's division, and Mr. Keppel's, who had sustained, to all appearance, as much damage as Sir H——'s, those two divisions were refitted for action at the time above mentioned, and Sir H—— had not repaired his, lying all the time with his fore-top-sail shattered, and not refitted. The damage sustained of loss of men on board Sir H——, was chiefly owing to cartridges blowing up between decks."

In consequence of this paragraph, Sir Hugh Palliser sent the following letter to the Admiral, to obtain of him an approbation of his conduct that might wipe away the calumny of the accusation.

Extract of a letter from Sir Hugh Palliser to Admiral Keppel, dated Pall-Mall, November 3, 1778.

"I think myself so much intitled to have my conduct on the day we engaged the French fleet justified by you, Sir, as Commander in Chief, from those aspersions, that I confess I have been expecting your offer to do it; I have waited for your coming to town to ask it: being now informed of your arrival, I lose no time in desiring you will contradict those scandalous reports that have been propagated as before mentioned, by publishing in your own name the inclosed paper,* which I have the honour to inclose herewith, or something to that effect, that may be more agreeable to you, and as may be agreed on, if you will permit me the honour to wait on you to-morrow morning.

I am, very respectfully, Sir,

To the Hon.
Admiral Keppel, &c.

Your very obedient humble servant,

HUGH PALLISER."

b

* Having

* Having seen a paragraph in the General Advertiser of the 15th of last month, highly reflecting on the conduct of Vice-Admiral Sir Hugh Palliser on the 27th of July, when the fleet under my command engaged the French fleet: and he having informed me that reports to the same purpose have been propagated by some of the officers of the Victory, I think it necessary, in justice to Sir Hugh Palliser, to publish to the world, that his conduct on that day was in every respect proper, and becoming a good officer; and I further declare, that when I made the signal in the evening for the ships to the windward to bear down into my wake, and afterwards for particular ships of Sir Hugh's division to do so, he repeated those signals properly, and that the calling his and Vice-Admiral Sir Robert Harland's division into my wake in the evening, was not for the purpose of renewing the battle at that time, but to be in readiness for it in the morning; that in obedience to the said signal, such of the ships of Sir Hugh Palliser's division as were in condition for it, did immediately bear down, as did the rest as soon as they were able, so that Sir Hugh Palliser and his whole division were all in my wake accordingly the next morning before day-light ready for engagement.

If Sir Hugh was innocent, he ought not to have noticed an anonymous news-paper accusation; had he not, we believe every thing would have passed over, and been forgotten in the common course of things; but the following Letter appearing in the Morning-Post, added fuel to the fire:—

“ HAVING seen, since my late arrival at Portsmouth, a very scandalous paragraph in the Morning Intelligencer of the 15th of last month, directly charging me with being the cause of Admiral Keppel's not re-attacking the French fleet, in the afternoon of the 27th of July last, containing many gross falsehoods, calculated expressly for the purpose of wounding my reputation, and to represent me in a culpable light to the whole nation; and being well informed that injurious reports of the like nature have been industriously propagated for the same purpose by some malignant wicked people, it becomes necessary for me, in order to vindicate my own conduct, to publish such particulars relating to the battle on that day, as may enable the public, who have a right to be fully informed of the truth in a matter of so much importance to them, to judge whether I was the cause of the French fleet not being re-attacked on that afternoon: I therefore request you will publish the enclosed paper, containing the facts necessary to be known, for justifying me from the said foul aspersions. After the nation is in possession thereof, if any individual, or if parliament, or the nation at large, call for a public enquiry, I am ready to stand the issue of such enquiry, but I shall not answer any questions, or queries in news-papers, or otherwise. Your's, &c.”

Pail-Mall, Nov. 4.

HUGH PALLISER.

“ At about six o'clock in the morning on the 27th of July, the British fleet was upon a wind on the larboard tack, lying up about W. by

W. by N. my division leading on that tack ; the French fleet was to windward ; at half past six a signal was made for several of the ships of my division to chase to windward, which occasioned them to stretch far a-head.

“ At ten the whole fleet tacked together per signal, and stood towards the French fleet, who soon after were plainly discovered to be on the larboard tack, in a regular, well-formed close line of battle a-head ; our fleet approached them without any order or line of battle. The ships of my division were separated from me by the above signal ; the ships of the other two divisions, though not in a regular line, appeared to be nearly so, and in a collected body, excepting the Duke, who was far to leeward.

“ About eleven a firing began between the headmost ships in our van and some ships in the van of the enemy's fleet, which became general as our ships got up in succession ; each proceeding from that part of the enemy's fleet, which they respectively fetched, on towards the enemy's rear, engaging as they advanced along the line.—Admiral Keppel with his division fetched the French admiral, and there began to engage.

“ About noon, in the Formidable, I fetched within random shot of the Duke de Chartres' ship, who commanded the van division of the enemy's fleet ; he fired many broadsides at the Formidable, but being at too great a distance, she did not return a single shot, but reserved her fire till she came within point blank shot of the ship she could fetch : there I began to engage, and passed on to the French Admiral in the centre of the line, engaging within musquet-shot, and alone ; having no second either a-head or a-stern, the ships of my division being scattered and separated from me by signal as aforementioned : however, they all got into action, and though not in a connected body with their Admiral, did their duty so well, that they suffered the most, as appears by the damages sustained by those ten ships being equal to the damages sustained by all the twenty ships that composed the other two divisions. This was occasioned by the regular and connected line of the enemy's ships being preserved ; whereby they were enabled to employ a greater force upon each ship in the rear of our fleet, who were separated at a considerable interval from each other, occasioned by the before-mentioned signal to chase, and from hence arose the numerous damages which the Formidable sustained, being subjected to the angular fire of a long range of the enemy's ships as she continued her progress along their line. This comparison of the damages appears by the account published from Admiral Keppel's letter of the killed and wounded, which was as follows :

“ Admiral Keppel's division, 43 killed, and 142 wounded.—Vice-Admiral Sir Robert Harland's division, 22 killed, and 45 wounded.—Vice-Admiral Sir Hugh Palliser's division, 68 killed, and 186 wounded.

“ By the blowing up of some powder on board the Formidable, about twenty men were hurt, but I do not recollect that any one

was killed thereby. The accident was occasioned by a man having a cartridge under his arm at the time he fired his gun. It is said the like accident happened on board other ships.

" I proceeded on with the Formidable to the sternmost of the enemy's ships, keeping my mizen top-sail a-back all the time, and engaged every ship within musquet-shot, the two last of which appeared not to have sustained any damage from any of our ships that had passed before us, not a shot-hole being to be seen in their sails: the Formidable brought down one of the enemy's ship's main-yard, which ship appeared to be otherwise much damaged, for she quitted their line, and went off before the wind, attended by a frigate.

" Between two and three o'clock, I had passed the sternmost ship of the enemy's line; at this time Admiral Keppel was at a distance, coming up, and a number of ships about him, and, I think, with the signal for battle flying. I concluded he was advancing to renew the battle: Vice-Admiral Sir Robert Harland was, with several ships, to windward of the rear of the enemy. I immediately wore the Formidable, and laid her head towards the enemy again, in order to endeavour to get into battle again, expecting it to be renewed when Admiral Keppel came up. We were then exactly in a line with the enemy's line, and at about random shot from their sternmost ships. In this situation the Formidable lay a considerable time, no other ship near her. Soon after this the van and centre of the enemy broke their line, and appeared to be in confusion: some of their heads one way, and some another.

" The Victory shortened sail, and unbent her main-top sail; and about this time some of the enemy's ships appeared to be filing off towards us, and two or three of their fresh ships standing directly for the Formidable; I therefore wore again, and laid her head towards Admiral Keppel to meet him:—then the enemy's ships edged away, and pointed to leeward of our fleet, and began to form the line in that direction.

" When the Victory and Formidable met, it was past 3 o'clock. The Victory passed the Formidable to windward, wore, passed under her stern, run down to leeward of her, and made sail ahead; this left the Formidable at a distance *a-stern*, and somewhat to windward of the Victory's wake, though the least so of any ship when she first hauled the wind. A signal was made for ships to windward to bear down into the Admiral's wake, which signal I repeated, for it was understood to be for Vice-Admiral Sir Robert Harland and his division to bear down; who was then far to windward, and he accordingly did bear down and brought up in the Admiral's wake, then nearly a-breast of the Formidable, and a little way to leeward of her.

" At this time it was apparent to the rest of the fleet (if it was not so to those in the Victory) that the Formidable was not in a manageable

manageable condition; we were then employed in knotting, splicing, &c. to get the ships under command, and to be able to make sail to get up with the Admiral, who was making sail on the star-board tack, the French fleet then a-stern doing the same.

“ After Sir Robert Harland had been some time in the Admiral’s wake, he with his division (by orders it is said) crowded all the sail they could carry, to get a-head of the Admiral’s division.

“ Late in the evening we saw the Admiral had made the signal for some particular ships of my division, (not the Formidable’s, her incapacity being so apparent) all which signals I repeated; the Ocean, and such of them as were under command, bore down according to the signal; others were not in a governable condition, and being employed as I was, in knotting, splicing, &c. did not immediately bear down. It is to be observed, that the Formidable, and the ships of my division, were the last that came out of the engagement, were the most damaged, and had had least time to refit; and that it is the disabled ships of my division that are alluded to in Admiral Keppel’s letter, where he says, ‘ The object of the French seemed to be the disabling of the King’s ships in their masts and sails; in which they so far succeeded, as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French fleet, &c.’

“ If, according to the preceding paragraph, extracted from the Admiral’s own account, they were unable to follow him, going towards the enemy, they certainly were equally unable to follow him, when he immediately made sail the contrary way, and it was unreasonable to suppose them capable of taking, and keeping their stations in a line of battle, at a cable’s length asunder, whilst in that condition.

“ Can any one possibly believe (as the dark assassin asserts) that Admiral Keppel called those same crippled ships to him, in order to renew the attack, and at the moment when he had just sent Sir Robert Harland away from him, with his division of fresh ships, who had been the longest out of the action, and had had the most time to repair their damage? Besides, the Admiral’s letters declare, that it was not his intention to re-attack before the next morning.

“ At night, the Fox frigate, Capt. Windsor, came to the Formidable, with a message from the Admiral to me, “ That he wanted the ships of my division to come into his wake;” but said not a word about his waiting for them, in order to renew the attack, as is falsely asserted. He was answered by myself, from the stern gallery, in the following words, “ Acquaint the Admiral I have repeated his signal for it;” and was going to say, “ Tell him, that the moment my ship is under command, I will endeavour to get nearer to him.” But the company of the frigate interrupted, by giving three cheers, which the Formidable’s people returned. It then blowed fresh, was dark, and the frigate passed

so quick, that there was not time to say any thing more which could have been heard.

“ The night was cloudy, with rain, and very dark ; it required all the tattered sails the Formidable could possibly set in the afternoon, and in the night, to keep way with the Admiral, so that we could only spare one top-sail at a time to be unbended, in order to bend others. After we had knotted and spliced as much rigging as we could to secure the masts, and make it safe to set sail upon them, and having shifted a fore and mizen top-sail, the ship was then under command, and, long before day-light, the Formidable, and every ship of my division, were in the Admiral's wake, expecting to engage immediately at day-light, but the enemy's fleet were gone off.”

Letter after letter, paragraph after paragraph, appeared in all the public papers, for and against Admiral Keppel and Sir Hugh Palliser ; but as they do not immediately concern the trial, and would not materially inform our readers, we omit them, 'till the important day in which the debate came on in the House of Commons.

During this debate, which happened on Wednesday the 2d of December, Mr. T. Luttrell concluded an animated speech on the conduct of the Treasury and Admiralty, (in which he charged them with an embezzlement in the Navy accounts of 300,000*l.*) with setting forth the necessity there was to enquire into the transactions of the 27th of July, as well in vindication of a brave Admiral, who had been much abused, as for our national safety.

Admiral Keppel arose, and after a solemn tender of his best services to the King and his country, declared, that he had stepped forth as Commander in Chief of the fleet, without a private friend in administration ; that he had been sent out under very disadvantageous circumstances ; and that the battle could not have been fought better. He alluded to Sir Hugh Palliser's letter in the public papers, the appearance of which had a good deal staggered him. He concluded by asserting, that he could not sail again with Sir Hugh Palliser ; and that the British flag had not been tarnished in his hands.

This brought up Sir Hugh Palliser, who took notice of Admiral Keppel's declining to speak as to his personal bravery ; said it was an insinuation, and if meant to conceal any thing against him, he would accept of no such apology. That he had been led to the publication complained of by Admiral Keppel, by an imputation thrown out against his character in a Morning Paper, which charged him with not having done what he

he might have done on the 27th of July. Who it came from, he said, he did not know, but he thought he had a right to address the Commander in Chief, and to tell the public what part *he* had acted on that important day. Sir Hugh then expressed his willingness to have the whole transaction scrutinized, though he said he did not wish it; not, however, that he was afraid of the result, as he was conscious his conduct had been unblameable, for that he had not disobeyed any order.

Admiral Keppel, in reply, said, " Sir Hugh Palliser's own publication is the only *insinuation* against his bravery. As to the imputation which, he is pleased to assert, occasioned his extraordinary publication, he knows where it came from. Sir Hugh Palliser went *himself* into the Morning-Post. With respect to the 27th of July, when signal was given to Sir Hugh for him to bear down into the Victory's wake, three hours passed before any thing was done. I will say no more."

On Friday the 11th of December, Mr. T. Luttrell rose, and made the following motion: " That an humble address be presented to his Majesty, that he will be pleased to give directions, that a Court-Martial may be held, to inquire into the conduct of Vice-Admiral Sir Hugh Palliser, in, and relative to, an action near Ushant, the 27th of July last, between his Majesty's fleet and the fleet of France, it appearing to this House, that the said Vice-Admiral did not obey the signals of his superior commander, when preparing to re-engage the ships of the enemy."—The motion was over-ruled.

In the course of the debate on this motion, Admiral Keppel, in a very pathetic speech, informed the House, that he had very unexpectedly received notice in an official letter from the Admiralty-Office, to prepare for a Court-Martial to be held upon him, in consequence of an accusation signed by Sir Hugh Palliser, and delivered to that Board the same morning, charging him, under an article of war, with neglect of duty, in not doing all in his power in the action off Ushant to destroy the fleet of the enemy. After this, he could only thank all the Honourable Gentlemen who entertained a good opinion of him; and he did not doubt but they would think it impossible to put off the trial consistent with his honour; it was a charge of so deep a dye, that it affected his life as well as his reputation, and, therefore, conscious of having done his duty, and feeling as an honest man, he must expect the trial would go on, though he was sincerely concerned for the inconveniencies and mischief it might occasion. Having said this, he told the House he should retire as soon as he had delivered an observation on what had fallen

fallen from the Vice-Admiral. He says, " I treated him with kindness and regard after the action. Good God, Sir! consider the trust I had committed to me: No less than the welfare, the security of all England, against the menaces of an invasion. Was that a time to enter into the unjust surmises of the Gentleman, that I was dissatisfied? No, Sir, I avowed before, and I repeat it again, I had no intention to throw any blame upon him; but when I saw Sir Hugh Palliser's name to a letter in the Morning-Post, which had a tendency to excite mutiny in the fleet, I own I then thought him to blame, and that he had accused himself to the public. But I forbear, and shall now retire."

On Admiral Keppel's declaring the order for a Court-Martial, there were very warm and learned debates in the House, on the propriety as well as justice of the present trial; and the behaviour of the Admiralty-board was most severely reprobated by many of the members, and as warmly defended by others.

Whatever were the sentiments of the gentlemen within doors, we may venture to assert, that the voice without doors was universally in favour of the Admiral; and his friends formed a most happy preface from the propriety of his retiring, and the dignity of his manner: nor can we help thinking, with the public in general, that the usage of a brave Admiral, who had more than once served his country faithfully, honourably, and successfully, was exceedingly severe and cruel. Sir Hugh Palliser's behaviour is not to be vindicated. It was an act of unjust recrimination, totally unbecoming a man who possessed either courage, honour, or virtue. The behaviour of the Admiralty-board was loudly complained of: men of the greatest abilities asserted that their power in this case was discretionary; it is not to be presumed we should venture our opinion on that matter; but if it was discretionary, we will not hesitate to declare, that they acted unpopularity, not to say partially, basely, and insidiously.

Admiral Bing fell a sacrifice to popular resentment, and the base and insidious behaviour of a set of men, who forsook him in the hour of his need: We must think that Sir Hugh Palliser will, if he has a day of trial, fail of support from his official friends: 'Tis the property of bad men to disown their agents in calamity. Not so the good man, who, as he wishes for his friend's prosperity, will not forsake him in adversity, but support him to the utmost of his ability and power.

Admiral Keppel went to his trial with the *vex populi* in his favour almost to a man: His abilities were acknowledged, his
courage

courage had been proved, and his honour hitherto unimpeached. Sir Hugh Palliser himself had written a letter to the Admiral, in which he expressed a high opinion of his courage and conduct.

Extract of a letter from Sir Hugh Palliser to Admiral Keppel, dated Formidable at Sea, October 5, 1778.

“ These prizes coming in our way are not unacceptable, but I know you would rather meet the French fleet.

“ I am, with the greatest regard and respect, dear Sir, your most obedient humble servant,

“ HUGH PALLISER.”

The Admiral's enemies were publicly known and universally detested; they could not think him guilty; and why they brought him to a trial is strange and unaccountable! The Admiral's friends were sensible of his innocence, but they were afraid of a trial; and some circumstances have fallen out in the course of the evidence, which must convince the world that no favour was designed him. The insolence of a M——, the treachery of a H——, with the meanness of a ——, and a ——, will be a lasting memorial of disgrace; while the evidence of Harland, Campbell, Walsingham, Allen, &c. &c. will be immortal monuments of naval honour and integrity.

Among other testimonies of public esteem, the following Memorial is consequential and important:—

To the KING.

“ WE, the subscribing Admirals of your Majesty's royal navy, having hitherto on all occasions served your Majesty with zeal and fidelity, and being desirous of devoting every action of our lives, and our lives themselves, to your Majesty's service, and the defence of our country, think ourselves indispensably bound by our duty to that service and that country, with all possible humility, to represent to your wisdom and justice,

“ That Sir Hugh Palliser, Vice-Admiral of the Blue, lately serving under the command of the Hon. Augustus Keppel, did prefer certain articles of accusation, containing several matters of heinous offence against his said commander in chief, to the Lords Commissioners for executing the office of Lord High Admiral of Great-Britain, he the said Sir Hugh Palliser being himself a commissioner in the said commission. This accusation he the said Sir Hugh Palliser withheld from the 27th of July last, the time of the supposed offences committed, until the 9th day of this present December, and then brought forward for the purpose of recrimination against charges conjectured by him the said Sir Hugh Palliser, but which in fact were never made.

“ That the Commissioners of the Admiralty, near five months after the pretended offences aforesaid, did receive, from their said colleague in office, the charge made by him against his said commander, and without taking into consideration the relative situation of the accuser and the party accused, or attending to the avowed motives of the accusation, or the length of time of withholding, or the occasion of making the same, and without any other deliberation whatsoever, did, on the very same day on which the charge was preferred, and without previous notice to the party accused of an intention of making a charge against him, give notice of their intending that a court-martial should be held on the said Admiral Keppel, after forty years of meritorious service, and a variety of actions in which he had exerted eminent courage and conduct, by which the honour and power of this nation, and the glory of the British flag, had been maintained and encreased in various parts of the world.

“ We beg leave to express to your Majesty our concern at this proceeding, and to represent our apprehensions of the difficulties and discouragements which will inevitably arise to your service therefrom; and that it will not be easy for men, attentive to their honour, to serve your Majesty, particularly in situations of principal command, if the practice now stated to your Majesty be countenanced, or the principles upon which the same has been supported shall prevail with any Lord High Admiral, or with any commissioner for executing that office.

“ We are humbly of opinion, that a criminal charge against an officer, (rising in importance according to the rank and command of that officer) which suspends his service to your Majesty, perhaps in the most critical exigencies of the public affairs, which calls his reputation into doubt and discussion, which puts him on trial for his life, profession, and reputation, and which, in its consequences, may cause a fatal cessation in the naval exertions of the kingdom, to be a matter of the most serious nature, and never to be made by authority but on solid ground, and on mature deliberation. The honour of an officer is his most precious possession and best qualification; the public have an interest in it; and whilst those under whom we serve countenance accusation, it is often impossible perfectly to restore military fame by the mere acquittal of a court-martial. Imputations made by high authority remain long, and affect deeply. The sphere of action of commanders in chief is large, and their business intricate, and subject to great variety of opinion; and before they are to be put on the judgment of others for acts done upon their discretion, the greatest discretion ought to be employed.

“ Whether the Board of Admiralty hath by law any such discretion, we, who are not of the profession of the law, cannot positively assert; but if we had conceived that this Board had no legal use of their reason in a point of such delicacy and importance, we should have known on what terms we served. But we never did
imagine

imagine it possible, that we were to receive orders from, and to be accountable to those who, by law, were reduced to become passive instruments to the possible malice, ignorance, or treason of any individual, who might think fit to disarm his Majesty's navy of its best and highest officers. We conceive it disrespectful to the laws of our country, to suppose them capable of such manifest injustice and absurdity.

"We therefore humbly represent, in behalf of public order, as well as of the discipline of the navy, to your Majesty, the dangers of long-concealed, and afterwards precipitately adopted charges, and of all recriminatory accusations of subordinate officers against their commanders in chief; and particularly the mischief and scandal of permitting men, who are at once in high civil office, in subordinate military command, previous to their making such accusations, to attempt to corrupt the public judgment, by the publication of libels on their officers in a common news-paper, thereby exciting mutiny in your Majesty's navy, as well as prejudicing the minds of those who are to try the merits of the accusation against the said superior officer.

HAWKE,
JOHN MOORE,
BOLTON,
SAMUEL GRAVES,
HUGH PIGOT,
ROBERT HARLAND,

BRISTOL,
JAMES YOUNG,
MATTHEW BARTO
FRANCIS GEARY,
SHULDHAM,
CLARK GAYTON."

What answer was returned to this memorial we cannot learn; but thus much is evident, that it was not successful; and the court was ordered to proceed to trial.*

The sentence of the Court, so honourable to the Accused, was no sooner spread abroad, than every face acknowledged the equity of the judgment. Every heart, but the most gloomy, was filled with joy; cities emulated each other in their testimonies of approbation and festivity on the occasion.

Not

* By the Commissioners for executing the offices of Lord High Admiral of Great-Britain and Ireland, &c.

WHEREAS we have issued our orders to Sir Thomas Pye, Admiral of the White Squadron of his Majesty's fleet, to hold a court-martial at Portsmouth on Thursday next, the 7th of this month, for the trial of the Honourable Augustus Keppel, Admiral of the Blue Squadron of his Majesty's fleet, upon a charge exhibited against him by Vice-Admiral Sir Hugh Palliser, for misconduct and neglect of duty on the 27th and 28th of July last, in sundry instances therein mentioned; and whereas we think proper that you should take the said Admiral, the Honourable Augustus Keppel, into your custody, and attend him to and from the said court; you are hereby required and directed to repair to Admiral Keppel, and acquaint him therewith: But as it is not our intention that he should be put under any greater inconvenience

Not a volume would contain a description of the rejoicings, in all parts of this kingdom, and in Ireland, which the public prints notified; but the thanks of both Houses of Parliament, and of the City of London, carry with them superior marks of the most honourable distinction.

On Tuesday, Feb. 16, the Marquis of Rockingham, in the House of Lords, after several handsome compliments on Admiral Keppel, and the Members who composed the Court-martial, read a motion, the purport of which was as follows:—
“ That the thanks of the House be given to the Hon. Admiral Augustus Keppel, for his excellent management of the British fleet in the course of last summer, for effectually guarding our coasts, and protecting our trade, so far as came within the extent of his command; and more particularly for his great bravery, conduct, and ability, on the 27th of July, in an engagement with the French.”—The motion was agreed to without one dissentient voice.

Thursday the 18th, the Lord Chancellor acquainted the House, that he had, according to the directions received from their Lordships, transmitted the thanks of the House to the Hon. Admiral Augustus Keppel, and had received from the said Admiral the following answer:

“ MY LORD,

“ The very distinguished notice which the House of Lords has been pleased to take of my services in the course of last summer, confers on me the highest honour: The advantages which their Lordships have thought worthy of their thanks are due to God’s blessing, and to the gallant behaviour of many great and able officers who served in the fleet, and to the bravery of the seamen. I can only say, that the warmest gratitude for this great honour and favour, will make me desirous of meriting it, by the most strenuous

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or confinement than is absolutely necessary, you are to take his honour for his appearance at Portsmouth on or before the said 7th day of this month, and on his arrival, attend him to and from the court during the continuance of his trial, and then to dispose of him as the court-martial shall direct. For which this shall be your warrant.

Given under our hands and the seal of the office of Admiralty, this first day of January, 1779.

SANDWICH,
T. BULLER,
LISBURN.

William Borough, Esq; Marshall of the Admiralty, or his deputy.

By command of their Lordships,
PHIL. STEPHENS.

uous endeavours to serve my country. I beg leave to return your Lordship my best thanks for the flattering and polite manner in which your Lordship has been pleased to communicate to me the resolution of the House.

" I have the honour to be, with much respect, your Lordship's most obedient humble servant,

" *Audley-Street, Feb. 17.*

A. KEPPEL."

The Thanks of the House of Commons were delivered by the Speaker in the following words :

" ADMIRAL KEPPEL,

" This House have done you the distinguished honour of ordering their thanks to be given to you,—an honour never conferred but upon extraordinary merit ; which thanks it is my duty to communicate to you in your place.

" After having sat so long in this chair, I hope it is unnecessary to declare, that I have been always happy to obey the orders of the House ; and I have now a particular satisfaction in that obedience—Indeed every generous mind must feel satisfaction, when the day of honourable acquittal succeeds to the day of severe trial ; and this pleasure was, I believe, never more general nor more sincere than upon the present occasion.

" You, Sir, was called by your Sovereign, with the approbation of all descriptions of men, particularly those of your own profession, to a station of the utmost difficulty, and of the highest importance. The safety of this country, and the honour of the British flag, were trusted in your hands, when the enemy was expected upon our coast ; and, notwithstanding the most able discharge of this great and momentous trust, you was accused of misconduct and neglect of duty. But, after a very long and full investigation, by men in every respect the best qualified to judge, that charge appeared to be ill-grounded and malicious ; and your judges have unanimously and honourably acquitted you, and have further added, that your conduct on the 27th and 28th days of July last was that of a judicious, brave, and experienced officer. Surely then it cannot be matter of surprise, that extraordinary marks of respect and esteem are shewn to such a character. We now know with certainty, that our confidence in you was not misplaced ; and we entertain a well-grounded hope, that there still remain, amongst the Naval officers, talents and abilities fully equal to this dangerous crisis.

" Amidst this general joy, I cannot help repeating the singular pleasure which I feel in giving you the thanks of this House, which I now do, for your distinguished courage, conduct, and ability, in defending this kingdom in the course of the last summer, effectually protecting its trade, and more particularly for your having gloriously upheld the honour of the British Flag on the 27th and 28th of July last."

The

The ADMIRAL's ANSWER.

“ MR. SPEAKER,

“ It is impossible, by any expressions I can use, to do justice to my feelings of gratitude to the House, for the honour they have done me by their approbation of my conduct.

“ The good opinion of my fellow-citizens, expressed by the representatives of the nation, cannot but be received by me as a most acceptable addition to the satisfaction I felt in the recent sentence, to which you have been pleased to allude, of a Court-martial; the result of a full and deliberate enquiry, expressive of their sentiments of the subject referred to their examination, in terms equally honourable to themselves and to me.

“ The pleasure I feel at this moment is not a little heightened by the unavoidable recollection of the very different emotions I felt when I was last in this house, and in this place.

“ I should be guilty of great injustice, if, on an occasion like the present, I neglected to inform this House, that my efforts for the public service, in the instances in which the House has been pleased to distinguish them, were most zealously seconded by many as gallant and able officers as the Navy of England ever produced; to whose attention and spirit, next to the Divine Providence, the success of these efforts ought to be in a great measure ascribed.

“ I cannot sit down without returning to you, Sir, personally, my particular thanks, for the very, very obliging terms in which you have executed the commands of the House.”

On Saturday, Feb. 19, Admiral Keppel was waited upon by the Committee from the Court of Common Council of London, when Alderman Crosby, as senior Alderman, addressed the Admiral in the following words:

“ ADMIRAL KEPPEL,

“ The Citizens of London, amidst the acclamations of a grateful people, beg leave to express their joy on your honourable acquittal from a very heavy and severe charge of neglect and misconduct on the 27th and 28th of July last; a charge which appeared on your trial to be *ill-founded* and *malicious*.

“ The Committee, Sir, who have now the honour to wait on you, by order of the Lord-Mayor, Aldermen, and Commons of the City of London, in common-council assembled, are happy in this opportunity to testify their approbation of your conduct in the many signal services done to your country.

“ I think, Sir, I cannot express their sentiments better, than by reading to you the unanimous resolutions of the Court of Common Council, holden in the chamber of Guildhall of the city of London, on Friday the 12th day of February, 1779:

PLUMBE.

PLUMBE, MAYOR.

Resolved unanimously, That the thanks of this Court be given to the lion. Augustus Keppel, Admiral of the Blue, for his long and faithful services to this country; for his ready acceptance, at the call of his Sovereign, of the important charge of Commander of the British fleet in time of imminent danger; for the anxious attention that appears in every instance of his conduct to the safety of this country; for his judicious, able, and spirited behaviour on the 27th of July last, in his attack on the French fleet; for his glorious and gallant efforts to renew the engagement in the afternoon of that day; efforts rendered unsuccessful through the want of obedience to his orders by the Vice-Admiral of the Blue; for the great protection given by him to our trade, to which entirely we are indebted for the safe arrival of the East and West-India fleets; for his animating conduct and example, happily followed by such signal exertion of spirit and intrepidity in the officers and seamen of the British fleet, as conveyed terror to our enemies, and obliged them to seek shelter in their own ports, by an ignominious flight.

Resolved unanimously, That the Freedom of this City be presented in a box made of heart of oak, with a proper device, ornamented and embellished with gold, to the Honourable Augustus Keppel, Admiral of the Blue, as a testimony of the very high respect and gratitude which the members of this Court entertain of his long and faithful services to his country. RIX.

Admiral KEPPEL's ANSWER.

"I receive, with the greatest sense of gratitude, the approbation which the City of London has been pleased to shew of my endeavours to serve my King and Country. The constitutional zeal which this great City has ever testified for the liberties of this kingdom, and for the succession in his Majesty's royal house, renders every mark of their regard a very high honour. I am happy, that the care of many excellent officers, and brave seamen, under my command, last summer, has contributed to the preservation of their trade, which makes so large a part of the national interest."

CHARACTER of the COURT-MARTIAL.

MR. Burke, in the House of Commons, declared, that from what he had seen of the Honourable gentlemen of the navy, his ideas, his admiration of, and his reliance on that body of men, was considerably increased, high as it had ever been, from what it was before. He never in his life saw so much true honour, true spirit, and true professional independence, as what appeared in their conduct, and it was to him a subject of the greatest triumph and consolation, that at a time when Ministers had practised every art to undo their country, we yet possessed so invincible a bulwark as the honest oaken heart of such a navy. No part of their conduct appeared so amiable, so virtuous, and so manly, as the extravagant joy that burst forth on the honourable acquittal of the

man

man they loved. So violent, so universal, and so uncontrollable was the rapture, so impetuous was the torrent that rushed from the heart, overwhelming the eyes, and drowning the speech; that all pictured representation, mimic exhibition, or even ideal conjecture, would fall infinitely short of doing justice to. It was a sight for men to wonder at, and Heaven to approve. It was the sudden emanation of the souls of men, and did more towards portraying the features of the heart, than all that profession could have pictured in the period of an age. He had read the fancied stories of romance, the fictitious tales of poets, and the ingenuities of men. He had seen the mimic representation of rapture, and he had seen the shouts of joy in common life. But all he had ever read of ancients, the stories of romance, the fables of the poet, the fictions of the drama, and the scenes of real life, fall as infinitely short of that scene of grandeur and human exaltation, as the soul of man transcends the body, or as the Heavens are above the earth.

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PROCEEDINGS

O F

The COURT-MARTIAL held at *Portsmouth* on Admiral K E P P E L.

M I N U T E S of the C O U R T.

THURSDAY, *Jan. 7, 1779.*

AT nine o'clock this morning, Admiral Pye, as Admiral of the White, and President of the Court-martial, hoisted his flag on board the *Britannia*. At a quarter past nine o'clock the Union Flag was hoisted in the Larboard Mizen Shrouds, as a signal for a Court-martial; and the Royal-Standard was hoisted in the Starboard Mizen Shrouds, as a signal that the Court-martial was to be held on an Admiral.

At ten o'clock the *Britannia* fired a gun, and the Union Jack was hoisted at the Fore-top-mast-head, as a signal for all the Admirals and Captains in harbour to come on board.

At half past two the signal was obeyed. The Admirals and Captains going in their respective barges on board the *Britannia*.

The names of the thirteen senior Admirals and Captains, exclusive of those summoned as witnesses, were then called over; and with them the court was constituted. Captain Walsingham, who is a witness, finding his name not called, desired to be informed of the reason. But an opinion of the Attorney and Solicitor-General, and Mr. Cust, the counsel for the Admiralty, on a case laid before them by order of the Admiralty, being read, and it appearing that they thought witnesses disqualified from being judges, Capt. Walsingham acquiesced.

The Court was then formed, consisting of the following members:

PRESIDENT, Admiral Sir Thomas Pye,

VICE-ADMIRALS Buckle and Montague,

REAR-ADMIRALS Arbuthnot and Roddam,

C A P T A I N S,

Milbank,		Penny,		Boteler,		Duncan,
Drake,		Bennett,		Moutray,		Cranston.
A				The		

The members of the Court-martial being sworn, the court was adjourned to the Governor's house. Being assembled there, the following charge was exhibited against Admiral Keppel, and read in court :

A Charge of Misconduct and Neglect of Duty against the Honourable Admiral Keppel, on the 27th and 28th of July, 1778, in divers instances as under-mentioned.

I. " That on the morning of the 27th of July, 1778, having a fleet of thirty ships of the line under his command, and being then in presence of a French fleet, of the like number of ships of the line, the said Admiral Keppel did not make the necessary preparations for fight ; did not put his fleet into a line of battle, or into any order, proper either for receiving or attacking an enemy of such force ; but, on the contrary, although his fleet was already dispersed, and in disorder, he, by making the signal for several ships of the Vice-Admiral of the Blue's division to chase to windward, increased the disorder of that part of his fleet, and the ships were in consequence more scattered than they had been before ; and whilst in this disorder, he advanced to the enemy, and made the signal for battle.

" That the above conduct was the more unaccountable, as the enemy's fleet was not then in disorder, nor beaten, nor flying, but found in a regular line of battle on that tack, which approached the British fleet, all their motions indicating plainly a design to give battle, and they edged down and attacked it whilst in disorder. By this un-officer-like conduct, a general engagement was not brought on, but the other Flag Officers and Captains were left to engage, without order or regularity, from whence great confusion ensued ; some of his ships were prevented getting into action at all, others were not near enough to the enemy, and some, from the confusion, fired into others of the King's ships, and did them considerable damage, and the Vice-Admiral of the Blue was left alone, to engage singly, and unsupported. In these instances the said Admiral Keppel negligently performed the duty imposed upon him.

II. " That, after the van and centre divisions of the British fleet passed the rear of the enemy, the Admiral did not immediately tack and double upon the enemy with those two divisions, and continue the battle, nor did he collect them together at that time, and keep so near the enemy, as to be in readiness to renew the battle, as soon as it might be proper ; but, on the contrary, he stood away beyond the enemy to a great distance, before he wore to stand towards them again, leaving the Vice-Admiral of the Blue engaged with the enemy, and exposed to be cut off.

III. " That, after the Vice-Admiral of the Blue had passed the last of the enemy's ships, and immediately wore and laid his own ship's head towards the enemy again, being then in their wake, and at a little distance only, and expecting the Admiral to advance with all the ships to renew the fight, the Admiral did not advance for that purpose, but shortened sail, hauled down the signal for battle ; nor did

did he at that time, or at any other time whilst standing towards the enemy, call the ships together in order to renew the attack, as he might have done, particularly the Vice-Admiral of the Red, and his division, which had received the least damage, had been the longest out of action, were ready and fit to renew it, were then to windward, and could have bore down and fetched any part of the French fleet, if the signal for battle had not been hauled down; or if the said Admiral Keppel had availed himself of the signal appointed by the 31st article of the fighting instructions, by which he might have ordered those to lead, who are to lead with their starboard tack on board by a wind, which signal was applicable to the occasion for renewing the engagement with advantage, after the French fleet had been beaten, their line broken, and in disorder. In these instances, he did not do the utmost in his power to take, sink, burn, or destroy the French fleet, that had attacked the British fleet.

IV. "That, instead of advancing to renew the engagement, as in the preceding article is alledged, and as he might and ought to have done, the Admiral wore, and made sail directly from the enemy, and thus he led the whole British fleet away from them, which gave them the opportunity to rally unmolested, and to form again into a line of battle, and to stand after the French fleet. This was disgraceful to the British flag, for it had the appearance of a flight, and gave the French Admiral a pretence to claim the victory, and to publish to the world, that the British fleet ran away, and that he pursued it with the fleet of France, and offered it battle.

V. "That on the morning of the 28th of July, 1778, when it was perceived that only three of the French fleet remained near the British, in the situation the whole had been in the night before, and that the rest wore to leeward at a greater distance, not in a line of battle, but in a heap, the Admiral did not cause the fleet to pursue the flying enemy, nor even to chase three ships which fled after the rest, but, on the contrary, he led the British fleet another way, directly from the enemy.

"By these instances of Misconduct and Neglect, a glorious opportunity was lost of doing a most essential service to the State, and the honour of the British Navy was tarnished."

After this, Admiral Keppel requested, "that the Log-books of the several Masters might be ordered to be delivered into court, and lie on the table for the inspection of the members." At first Sir Hugh Palliser objected to this, on the ground of its not being possible to authenticate them, until the Masters were sworn; but finding an inclination prevail to have them produced immediately, lest they should suffer any alteration, Sir Hugh waved the objection.

FRIDAY, Jan. 8, and SATURDAY, Jan. 9.

After the Court was opened, Sir Hugh Palliser desired that an oath might be administered to each Master, that the Log-book he

delivered was the true and original ship's Log-book,* without any alterations or additions since made therein. Court agreed. Masters names read, and those who had log-books sworn, except Mr. Arnold, of the *Robuste*, who refused the oath, some alterations and additions

* By the Log-book is meant a public record of the most remarkable occurrences, of what happens in or about the ship; or when sailing in a fleet, or in company with other ships, the observations made in regard to the ships in company, and particularly about the Admiral or Commander in Chief's ship, his signals, manœuvres, &c. The Log-book is the ground-work for all the journals kept on board the ship, to which every person on board (that keeps a journal) applies for information, and it is ruled in columns, in which are marked the distance sailed, the course or point of the compass the ship was steered, and the winds that blew; and a large margin for inserting transactions and observations.—By the Log-book every day begins (according to the common account) the day before at noon, i. e. the 27th of July by the Log-book, began the 26th of July at noon: Commanders in Chief, in *their detail of transactions*, mention the afternoon, (*or evening's*) transactions of a day; but it is never so regarded in what is called the ship's Log-book.—The ship's Log-book is kept on a board for that purpose by the different master's mates, in their respective watches, and afterwards entered down under the inspection of the master. Sometimes the Lieutenants who have the watches, are ordered by the Captain to sign their names on the Log-book for every time or watch they have the charge, in which case the mate of the watch brings him the remarks that are intended to be minuted down, before he inserts them for his approbation; he then signs his name at the conclusion of the watch, as a voucher of its authenticity.—In time of action with an enemy, the Captain (if there is no Flag officer on board) takes the *whole* command upon himself; in that case, the minutes are always set down by the master, *with his* approbation, and every officer's observations are examined into, particularly those made by the gentlemen appointed to observe signals, who minute down, *by a good watch*, every thing within their observation. And after once set down in the Log-book, it is considered a public record, and every alteration or erasure as a forgery.

Extract from Byng's trial, as to the authenticity of Log-book evidence.

In the trial of Admiral Byng, Capt. Everit, on examination, looked at a paper in his hand.

Mr. Byng said, I desire the witness may be asked, what that paper is.

President. What is that paper? A. Minutes that were taken from the log, and from my journal.

Q. When did you take them? A. Since the action.

Q. Did you keep the log yourself? A. No.

Court cleared—and soon after opened, when a resolution was read, that the witness might refresh his memory with such memorandums; when the unfortunate Admiral spoke as follows:

"I beg the Court will consider that Log-Books are kept by various people, and are liable to great mistakes; and therefore remarks taken from thence cannot properly appear in evidence.—Please to observe, he founds his evidence upon the Log-Book, and yet cannot swear the Log-Book to be true."

But, this as well as many other important matters, were not considered.

additions having been made; the captain thinking them not sufficiently particular, they were facts he could not swear to. The log-book laid upon the table.

The Master being sworn, Sir Hugh Palliser asked him, if his objection to swear to the log-book was on account of the alterations or additions? He replied, both.

Questions by Mr. Keppel. Were they made since it was known I was to be tried by a Court-Martial. A. I believe some of them were 10 or 14 days ago.

Q. By whom and by whose order? A. By the captain's order, copied by one of the mates.

Asked, whether they were given in writing? A. Some were verbal, some in writing.

Q. Did you, upon the captain's requisition, refuse to insert them yourself? A. No, I could not.

Q. Was there any officer present at the time? A. I believe the first lieutenant.

Q. Were they made by the usual person that keeps the log-book? A. Yes.

Q. Where were the alterations made? A. In the great cabin of the *Robuste*.

Q. Did the Captain see the log-book? A. The Captain sees the log-book every day.

Q. Whether, after the action, the Captain approved of what was put into the log-book relative to that day's work? A. It was not inserted in the log-book until it had received the Captain's approbation.

Q. Were the alterations for the 27th and 28th inserted at that time by the Captain's approbation? A. The Captain frequently found it necessary to add to, or interline.

The *Elizabeth*, and *Bienfaisant*, had no log-book.

Sir Hugh Palliser desired to have access to the log-books out of court-hours. Mr. Keppel objected.

Court determined, "That Sir Hugh Palliser was entitled to an inspection of the log-books after the rising of the Court, if made in the presence of an officer, who should be sworn to the strict preservation of their present contents."

Capt. Marshall, of the *Arethusa* frigate, sworn. Allowed to look at his minutes. Examined by Sir Hugh Palliser.

Q. When was the French fleet first discovered? A. On the 24th of July, about half past two o'clock. We did not see them so soon as other ships.

Q. Were the French fleet, during that afternoon, to the eastward of the British fleet, or how otherwise situated? A. I am not prepared to answer any questions previous to the 27th of July, but I will speak to the best of my recollection.

Q. How

Q. How did the enemy appear to be employed? Was it in forming their fleet into a line of battle? Or in what other way? **A.** I did not observe, being so much otherwise employed.

Mr. Keppel. "I think nothing can come as a charge against me but what relates to the 27th or 28th of July. But I have no objection to such questions being asked. If the accuser does not go into them, I believe I shall."

Q. Between seven and eight o'clock in the evening of the 23d, how was the French fleet standing? Was it to or from the British fleet? **A.** To the best of my recollection the British fleet had their larboard tacks on board, the French their starboard.

Q. At eight o'clock did not the King's fleet bring to on the larboard tack per signal? **A.** Yes. [Admitted also by Mr. Keppel.]

Q. Was the wind about west by north, or west north west at that time? or how was it? **A.** At west by the log.

Q. What time or hour do you mean? **A.** From half past three to nine o'clock.

By the Court. This is mere log-book evidence. Capt. Marshall speaks only from his log. He answers no questions from his own knowledge.

Mr. Keppel. "I wish Capt. Marshall were permitted to withdraw to recollect himself, that he may be able to answer these questions, as he came only prepared for those that relate to what passed on the 27th and 28th of July." [Permitted to withdraw. After a little time called in again.]

Q. At what distance, and in what situation, was your ship from the Victory, at six o'clock in the morning of the 27th of July? **A.** My ship was nearly in her station: Rather abaft the Admiral's beam, about three miles distant.

Q. Were not the ships of the British fleet at that time much extended, scattered, and dispersed? **A.** Some ships of the Blue division to leeward, and the Red division rather to the windward, upon the weather quarter.

Q. Were there not some ships considerably to leeward, and others considerably to windward? **A.** In the morning they were.

Q. Was there a signal made by the Victory on the morning of the 27th of July, for several ships (particularly of the Vice-Admiral of the Blue's division) to chase to windward? If you recollect this, say at what time? and for what ships the signal was made? **A.** Such a signal was made, but I did not repeat it.

Q. At what time was it made? **A.** I do not recollect.

Q. For what ships was it made? **A.** I know not. [Referred to his log.] It is not mentioned here, but I imagine the signal was for some ships of the Blue division.

Q. In consequence of that signal, did you observe several ships chasing? **A.** Some ships did chase. The number I know not.

Q. Did

Q. Did not that signal occasion those ships to be more separated from their flag, and more scattered before? **A.** I cannot determine. I was to windward.

Q. As you was to windward, and as those ships were chasing to windward, and you saw them chase, did it not cause them to be separated, and more scattered than before? **A.** Certainly the ships that failed the best increased their distances the most. I don't pretend to speak as to the fleet. I attended only to the flag.

Mr. Keppel. "I suppose he was employed in making minutes of signals, and he could not, of consequence, attend to the fleet."

Q. Was not the British fleet then standing on the larboard tack till there was a signal made for them to tack all together? **A.** Yes.

Q. At what hour was such signal made? **A.** At half past ten o'clock.

Q. Soon after the British fleet tacked, was not the French fleet discovered to windward, approaching to the fleet on a contrary tack, in a regular line of battle, a-head? **A.** I did not observe either in a line of battle, or on a contrary tack, until just before the firing began a-head.

Q. When did you discover the French fleet in a line of battle? **A.** When they had their larboard tacks on board.

Admiral Montague. Did you see the French fleet in a line of battle before the engagement began? **A.** I imagine they were in line of battle before they tacked. I believe it was about nine o'clock in the morning.

Q. Did Admiral Keppel make the signal for the fleet to form into a line of battle, or into a line on any point of the compass the day before the engagement began? **A.** No, I think not.

Q. Was there sufficient time for a line of battle to have been formed, from day-light before the engagement began? **A.** Most certainly. There was sufficient time to have formed a line. Five hours.

Q. Did the King's fleet advance towards the fleet of France, without being in such line or order? **A.** Yes.

Q. from Admiral Buckle. Was there a general signal for the whole fleet to chase at that time? **A.** Not that day. But I considered that we were in chase from the time we saw the French fleet, except when there was a signal for the line of battle.

Q. As the British fleet were not in a line of battle, or in any line upon any point of the compass, was it possible for us to engage ship to ship, from the manner in which we were engaged? **A.** It was impossible, some of our ships being so far to leeward.

Q. Did Admiral Keppel make the signal for battle, whilst the fleet was without any line of battle, or any other line. **A.** Yes.

Q. from the President, Sir Thomas Pye. Did Admiral Keppel make the signal for battle before the firing began? **A.** The firing began first.

Q. from

Q. from the Court. Did the French or English fire first? *A.* I do not know.

Q. Did you observe the Formidable after the engagement? and what situation was she in? *A.* Disabled, as some other ships were.

Q. Did you observe her wear and lay her head to the enemy? *A.* I did not observe her at the time of wearing, but her head was laid to the enemy.

Sir Hugh. Were not those ships then a head of the Admiral, when they were ordered to chace, and on his lee bow? *A.* Some of them I believe were.

Q. Such of them as were of the Vice-Admiral of the Blue's division, being in that situation and on the larboard tack, was not that the proper station of that division to be in readiness to form the line of battle upon that tack, in case the signal had been made for them, that division being to lead upon that tack? *A.* The Vice-Admiral of the Blue was to lead on the larboard tack.

Q. Were not some of the frigates and fire-ships exposed to the enemy's fire, before they could get out of the way? *A.* I know not.

Q. Did any of the enemy's shot go over your ship, before you got out of the way? *A.* No, not till I was in my station, abreast of the Victory, to leeward; and after I had brought to, and then I think we bore up twice a little out of the way of the shot, having no business there.

Q. Were any of the frigates and fire-ships then to the windward of the Victory, and a-head of you? *A.* There might be. I cannot be positive.

Q. What situation did you preserve with respect to the Victory, when she was going down along the rear of the enemy's line?—*A.* I endeavoured to keep on the Victory's beam out of gun shot.

Q. Was you in that situation when the Victory passed the last of the French line? *A.* I cannot be positive as to the exact situation. The Victory being in a smoke, I could only see her at intervals. I endeavoured to keep in my station.

Q. When the Victory had passed the rear of the enemy's line, and had ceased firing, and the smoke was cleared up, did you then see her, and in what situation was you then from her? *A.* I saw the Victory certainly, but it is so long ago, I cannot recollect the exact situation of her.

Q. How long and how far did the Victory continue to stand after passing the last of the French fleet before she wore? *A.* To the best of my recollection, a very little while.

Q. What do you mean by a very little while? *A.* I cannot confine myself to any time.

Q. Ten minutes? *A.* I cannot confine myself.

Q. As to distance, what will you please to say? *A.* I cannot ascertain the distance.

Q. At

Q. At what time did the *Victory* wear? A. We repeated the signal soon after one, as it appears by my minutes taken down by the purser. I never had the glass out of my hand.

Admiral Montague. Do you know from your own knowledge, what time the *Victory* wore? A. By my glass I saw the signal, and imagined it was soon after one.

Q. Was the signal for battle on board the *Victory* hauled down before or after she wore? A. To the best of my recollection after she wore.

Q. How long after? A. Not a great while.

Q. Have the minutes taken on board the *Arethusa*, of the signals made, been examined and compared with those taken on board the *Victory*? A. The minutes I have in my hand were taken by the purser, and will be sworn to.

Asked again. A. They have not been compared with any other minutes, except seeing as to time, and there has been no alteration.

Q. Whether those minutes you have in your hand, mark the time the signal for battle was hauled down? A. It was at 26 minutes past one in the afternoon.

Q. Did the *Victory* at any time set her top-gallant sail that day? A. I do not recollect that she did.

Q. Did you observe a signal from the Admiral for any of the Vice-Admiral of the Blue's division to come into the *Victory*'s wake? A. There was such a signal.

Q. At what hour was it first made? A. At twenty-four minutes past three o'clock.

Q. How long did it appear to you to be flying? A. About six minutes.

Q. Was it hauled down? A. Yes.

Q. Was it hoisted again; and at what hour? A. At ten minutes past six o'clock.

Q. The morning after the engagement, on the 28th of July, were not three of the enemy's ships in sight? A. I observed three sail, which I thought crowded sail from us.

Q. Were they line of battle ships, or frigates? A. I cannot say.

Q. Was there any signal made by the Admiral to chase them? A. I think not.

Sir Hugh Palliser declared he had done with Mr. Marshall for that time; when Admiral Montague (to exculpate Admiral K. from the charge of running away from the enemy) put the following question: "From the day you first saw the French fleet, to the time you lost sight of them, do you from your own observation or knowledge know of any act of the commander in chief, Admiral Keppel, behaving or conducting himself unbecoming of a flag officer?" Capt. Marshall answered, NO, NOT ONE, AS GOD IS MY JUDGE.

Sir William Burnaby, Captain of the *Milford* frigate, was then called, and so far as he went in his evidence, it appeared, that on the night after we first discovered the French fleet, they might have got into Brest, if they had been disposed to avoid an engagement with us.

MONDAY, Jan. 11.

SIR *Hugh Palliser* proceeding to examine Sir *William Burnaby*, relative to the operations and apparent dispositions of the two fleets, from the time he first descried the enemy—Admiral Keppel observed, that, though he should think it necessary himself to ask a few questions respecting transactions previous to the 27th and 28th, which were the days to which the charge was confined, he did not think his accuser should be allowed to enquire into every thing that happened on the preceding days, when the enemy stood in sight. The Court seemed, however, of opinion, that, if the prisoner was suffered to ask such a number of questions as he might, in the preceding case, judge necessary for the explanation of the affair of the 27th, the accuser was entitled to the same indulgence; but to be more certain, one of the members proposed to withdraw, as the Court was about to retire into another apartment for private deliberation. Sir *Hugh Palliser* explained his motives for taking the matter up so early as the 23d; he said he had charged the Admiral with not having made the necessary dispositions for battle, as the enemy had not shown the least disposition to avoid an engagement from the time they first appeared in sight of our fleet. The question he meant to put established that fact, which it would be impossible for him to do, unless he had the Court's permission to examine evidence from the enemy's first appearance. The Court, after a consultation, resolved, that the accuser, as well as the prisoner, should have leave to ask questions respecting the disposition of either fleet from the 23d.

Sir *William Burnaby* then informed the Court, that when he first perceived the French fleet, about two o'clock in the afternoon of the 23d, they were to the eastward of our fleet, nearly a-head, or rather leeward, standing towards us, and appearing to be in great disorder: that the *Milford* having received orders from the Admiral to reconnoitre the enemy, he made towards them, and saw them still in disorder, keeping a little from the wind, and still standing towards the British fleet; their van, as he judged, being about six or seven miles from the van of the British. That at half past four he tacked and stood towards the *Victory*, the French fleet nearly then beginning to form a line a-head, seeming to direct their course to leeward of our fleet, and very little from the wind. It was very hazy, and late before he joined the *Victory*, and received orders from the Admiral to go a-head, and keep between the two fleets, and acquaint the Admiral if the enemy should be standing towards, or approaching us: he could not particularly observe their motions the rest of the evening from the thickness of the weather, but he could

could see they were continuing to form their line, and steering the same course towards us; being to leeward of our fleet, their rear considered a-head of ours, their position upon our lee-bow on the starboard-tack, and many of them indeed formed in line of battle, the wind then west and by south; about half past eight o'clock, the British Admiral made signal for the fleet to bring to, and, to the best of his recollection, it continued in that situation all night.

Sir Hugh Palliser then put this question to the witness: The French fleet being to leeward of the British, and standing southward, at the same time our fleet lying-to, on the larboard-tack, with their heads to the northward, are you of opinion, that, if they were disposed to avoid coming to an action, they would have continued upon that tack during that night, having the port of Brest under their lee?—The witness answered, that he thought it very possible; but he judged they did not stand all night upon that tack; and assigned as a reason for this opinion, that at day-break he found himself a little to leeward of the French fleet, they being a-head, and to windward of us; but he agreed, that from the situation of the wind in the morning, and the relative positions of the two fleets, we had, in the course of the night, got between them and Brest.

He was asked by one of the Court, whether a shift of the wind in the night might not, without changing their tack, bring the French fleet into that situation in which he saw them in the morning, and upon which he formed his judgment, that they had not stood all night upon the same tack?—His answer was, that the wind had shifted to the north.

Being asked, would that bring the windward or leeward? he hesitated a considerable time; upon which the Court desired him not to give answer at hazard; and if he was not clear in the matter, to say at once that he did not know; which the witness did accordingly.

Upon further interrogations it appeared by his answers, that the French fleet were all that day forming in line of battle; that on the 25th and 26th the weather was squally, with fresh gales, which occasioned such a north-west swell, as is usual with such winds; that the French fleet kept the weather gage of us all the time, and he generally observed then his line of battle, and rather gained upon our fleet; sometimes carrying a pressing sail, at other times under an easy sail, for the better perfecting their line of battle; that during all that time, had they been ever so much disposed to attack our fleet, they could not have done it without disadvantage, as they could not without risque fight their lee lower-deck guns, whilst we could fight our weather lower-deck guns, or part of them at least.

He was then examined as to the situation of the British fleet on the morning of the 27th; when he said, they were somewhat dispersed; that he remembers a signal made by the Admiral between nine and ten that morning for some ships to chase, and saw them crowd sail accordingly, but could not say whether they were of

the Blue division. That he did not perceive that the Admiral made any signal for the fleet to form into a line of battle a-head, or upon any point of the compass; that about eight o'clock, the French were in a regular line of battle; and that at half past eleven, when the Admiral made a signal to engage, our fleet seemed scattered. The French were pretty well formed all the morning, and the attack was begun by them; that both the fire-ships, the *Proserpine* and *Milford*, were exposed to the enemy's fire, before they could get out of the way; but he had no man killed, nor did he hear the others had; that our signal for battle was hoisted about eight minutes after the firing began.

Being asked whether, by the French fleet attacking the British, whilst so dispersed, and in no line, it was not impossible for us to engage ship to ship, or bring on a general engagement?—He answered, As far as my little experience in the service can enable me to judge, I think it did.

Admiral Montague enquired of the witness, whether, if the Admiral had not advanced, he could have brought the French to action?—The witness replied, that he should think not, if the French had been disposed to get away; he believed, that if the French had lain to for us, the action would have been more general, but the French fleet absolutely edged down, and brought on the engagement sooner.

Being questioned respecting the time and distance that the *Victory* had passed beyond the French line, he could say nothing of the distance, but the time was five and twenty minutes before she wore. He could not charge his memory exactly to the time the signal of battle was hauled down; but the Admiral being a-head of the enemy, he remembered his wearing again and standing from the enemy upon the starboard-tack, which tack the enemy was upon also; at that time the Admiral wore by signal; that a little after the action ceased, he observed the French fleet beat up their line of battle, and in confusion, but not scattered: that the Vice-Admiral had before that time doubled on the rear of the enemy, and was to windward of them; that, to the best of his judgment, Sir Robert Harland, and his division, could have borne down upon the enemy, then being to windward of them, had the Admiral advanced with the rest of the British fleet, and kept the signal for battle flying, or if he had the signal appointed by the 31st article of the fighting instructions for the ships on the starboard tack to take the lead; and that if the stated enemy had been so re-attacked in that confusion by the Vice-Admiral of the Red bearing down, and the Admiral advancing, the enemy must have been prevented from forming the line so soon as they did, and finally, that they formed unmolested; but as a very young officer, he did not lay much weight upon the competency of his judgment.

The rest of this evidence, which concluded the business of the Court at half past four, tended chiefly to prove, that the Vice-Admiral of the Red, and part of his division, had occupied the station in the Admiral's wake, which he had made signal for Sir Hugh Palliser

Palliser to get into; but Sir Robert was ordered by the Admiral, when he wore; had left the Vengeance a-stern about two miles, much disabled, and in great danger of being cut off; he also remembered seeing three or four of the enemy's fleet next morning, which were not pursued by any of our fleet.

When the prosecutor had finished, the Court put the following question to the witness: "Whether, during the day of action on the 27th of July, to his knowledge, Admiral Keppel negligently performed the duty imposed on him?" The witness answered, that it was a question of great importance, far above him to determine, being so young in the service. That no man had a higher opinion of, and a respect for, the worthy gentleman in question.

On Sir William Burnaby's refusing to give a more direct answer, the Court retired for some time. On their return their resolution was read, that the question should again be put, when Sir Hugh Palliser got up, and offering a written paper, desired that his dissent to their proceedings should be read by the Judge Advocate. The Court would not listen to this, and Sir Hugh beginning to read it himself, was stopped. The question was again read, and Sir William Burnaby answered, who declared, "he did not think himself competent to say any thing more, but that he thought Admiral Keppel the bravest and most gallant officer in the navy, and that he said this from his heart."

TUESDAY, Jan. 12.

Cross-Examination of Sir William Burnaby.

ADMIRAL KEPPEL.

DID you see the Vice-Admiral of the Blue, with several ships of his division?—I was prevented by the intervention of Sir Robert Harland's ship.

They were not in the leeward of Sir Robert Harland?—There were different ships of the Red and Admiral's divisions, which prevented my view.

Did the Vice-Admiral of the Red, in making sail according to my orders, pass to the leeward of the Vice-Admiral of the Blue?—I believe he did.

Did the Vice-Admiral of the Red, in getting to his station ahead, pass to the windward of the Admiral?—I think he did.

At what hour did you make observations that the Vengeance was in danger, as you have described her?—About five in the afternoon.

Had Sir Robert Harland then made sail, or was he making sail agreeable to the Admiral's orders?—I think he was making sail.

Was your ship then as near to the Vengeance as to the Victory? At the time I observed her in danger, I think I was much nearer the Vengeance.

After

After Sir Robert Harland had at this time made sail, how many ships in line of battle were in the Admiral's wake a-stern of him? I neither recollect their number nor their names.

Do you allow there were any?—There were.

Were there two?—Undoubtedly.

Was the Vice-Admiral of the Blue one?—I judged them to belong to Sir Robert Harland's or the Admiral's division.

Where was the Vice-Admiral of the Blue when Sir Robert Harland interrupted your sight of him no longer?—I think he was a-stern, and pretty well to windward. [In answering this question he recollected himself, and gave it in other words, though with much the same meaning as at first. To this Admiral Sir Hugh Palliser objected, and insisted that the first words should be taken down. The Court however unanimously agreed, that if it was admitted in one case, it should be in others, and it had been hitherto admitted to all to recollect themselves.]

Was the Vice-Admiral of the Red, when a-stern a little to windward, closed in the line with the Admiral's rear?—I said before, that at five he was a little to windward in the Victory's wake, closed very near some of them.

It was at this time when you was to leeward, and the Vice-Admiral of the Red closed in with the ships a-stern of the Victory, that he intercepted your view of the Vice-Admiral of the Blue?—I before said that it was in passing to leeward from the Victory to Sir Robert Harland; that my view was interrupted; by what ships I did not point out; all contributed.

When you hailed the Queen, did you see the Vice-Admiral of the Blue?—I cannot say I did.

At this time was there a signal for a line, or a blue flag at the mizen-mast, or either flying?—I neither recollect, nor did before. I signified that I had not seen any alteration of the signal for forming the line on the starboard tack.

If, at the time when the Vice-Admiral of the Red moved, the Vice-Admiral of the Blue had taken his place, would it not have given certain security to the Vengeance?—I should judge so, if his ships were fit for action.

Did you then know whether they were fit?—I did not imagine so.

From three in the afternoon of the 27th till six, did you observe any British ships much to leeward before the beam, and on the lee-bow of the Victory?—I do not recollect any.

Did the Admiral on the 24th, when the French fleet were in view, call you within hail, and what orders did he give you?—He did call me, and bid me make sail, and keep between the British and French fleets.

Did you see any motion that night that gave you reason to make a signal?—I did not.

Did

Did the Admiral pursue the French that afternoon by signal of the compass, and endeavour to close with them?—I recollect your carrying sail on the larboard-tack, and standing toward the French with our van in tolerable order in line of battle.

Was it by standing farther from the Admiral than the Queen, that you gained an opportunity of seeing the Vengeance?—It was.

Is there not an appointed signal when an Admiral would have able ships guard those which are disabled?—There is, but I neither saw nor knew of one being then made.

You have told the Court, that the Vice-Admiral of the Blue was well a-stern of the Admiral's wake; did you then notice the situation of the Formidable as to sails and rigging?—I do not recollect her immediate situation; I think she seemed disabled.

Did she appear equally as able to carry sail as the Victory?—I think not.

Did not the Victory carry her top-sail's entire, and her fore-sails at that time?—I have said before I believed, during the greater part of the afternoon, she carried her top-sails and fore-sails, but whether whole I cannot say.

Did you observe a signal from the Vice-Admiral of the Blue, that he could not accompany the Admiral?—No.

Is there such a signal?—I think so.

Was the Victory a better sailer than the Formidable?—From the observations I made of their sailing, I think she was.

As you say the Formidable was disabled, and the Victory had advantage of sail, do you suppose the distance between them was occasioned by the Victory's sailing, or a fault in the management of the Formidable?—I conceive it arose from the disability of the Formidable, and the natural superiority of the Victory.

When you passed near the Formidable, could not you soon have taken any message from Sir Hugh Palliser to me?—If a signal had been made to me for that purpose, I could soon have done it.

Sir Hugh Palliser. Was not the condition of the Formidable apparent at that time?—Before then she appeared disabled.

Admiral Keppel. Was the top-mast, top-gallant-mast, top-sail-yard, or lower-yard, of the Formidable, carried away?—[Sir Hugh Palliser admitted they were not.]

Captain Digby, of the Ramillies, being the next witness called upon, Sir Hugh Palliser began to interrogate him respecting the business of the 23d; when Admiral Keppel begged the Court to take notice, that for the purpose of shortening the length to which he saw the trial would extend, if they still went over the same ground, and questions were repeatedly asked which he had admitted, he again told them, that he admitted that the French fleet put themselves in order of battle when we discovered them.

Sir

Sir Hugh Palliser. When the French fleet was to windward of the English, with the wind at west, was not Ushant then under their lee?—*Capt. Digby.* It was.

What situation was the French fleet in the morning with respect to the British?—To the northward.

Had the French Admiral intended to have avoided coming to an action, would he not have avoided on the starboard-tack in the night-time toward Brest?—That is matter of opinion.

Had the French Admiral continued to stand on that tack all night, with the wind blowing strong, as you have described, would they not the next morning have been near to the port of Brest, and at a great distance from the British fleet?—They would have been nearer to the port of Brest, and farther from the British fleet.

On the contrary, did not the French gain the wind of the British fleet, and thereby place it between them and Brest?—They were to the windward the next morning, and of course we were nearer between them and Brest.

Did you consider these motions of the French Admiral as tending to avoid or come to an action?—I did imagine at that time the French fleet intended to come to an action.

You said it blew hard in the night; what weather had you the next day?—More moderate.

From your recollection of its blowing fresh and squalling part of those days, was it attended with sea and swell, as is usual to such weather?—There was a swell, but not very particular.

Could ships have fought their lower-deck guns?—I could not have fought all mine most part of the time.

Had the French come down and attacked the British fleet at the time when the British fleet could not fight their lower-deck guns, would it not have been very disadvantageous for us?—[Here it was objected to Sir Hugh Palliser, that he had, as usual, drawn conclusions very different from the evidence, and asked his questions in terms inadmissible: such an unwarrantable perversion it was said could not be tolerated. Instead of stating that the *Ramillies* could not fight part of her lower-deck guns, he had stated, that all the fleet could not fight all her lower-deck guns. In consequence of this reproof, he altered his question, and it stood, That whenever such ships as the *Ramillies* could not fight her lower-deck guns, would it not have been, &c.]—That seems matter of opinion, and depends on their ships.

When the weather moderated, did it appear to you that the French Admiral crowded sail to get away, or that he made and shortened sail occasionally, to perfect his line of battle?—I saw many of the ships shortening sail and crowding sail occasionally, but after the first day I always thought they wished to get away.

Did you see the French fleet bring to, in order for the British fleet to come up with them?—I don't recollect ever seeing the whole of the French fleet brought to at any part of that time.

Admiral

Admiral Montague. Did you see the British Admiral endeavour to get up to the French fleet, while they were forming their line? [Admitted by the prosecutor.]

In the morning of the 27th, was the British fleet much extended or dispersed?—Much about the same as it was the day before in the morning, before the signals were made.

How were they the day before?—Not in the same sort of order as when there had not been a line of battle.

Do you remember a signal being made that morning for several ships of the Vice-Admiral of the Blue's Squadron to chase to windward?—I do.

How many were there?—I think there were four.

At what time did the British fleet tack all together, to stand toward the French fleet?—I think between nine and ten.

Did the Admiral make any signal for the British fleet to form into a line of battle that day before the engagement began?—[Admiral Keppel begged the house to recollect, that he had admitted this fact over and over again. He did not mean to form a line of battle till he had closed with, engaged, and passed the rear of the French fleet.]

Sir Hugh Palliser. Did the Admiral make the signal for battle while the fleet was scattered and dispersed?—[Here again the Vice-Admiral was called upon to attend to the words of the witness. The witness averred, he had never said the fleet was scattered and dispersed. The four ships indeed that were ordered to chase, were separated. This Admiral Keppel said he meant them to be, and hoped there would be found no more of these mistatings. [He then stated the question, when the fleet were thus separated and dispersed.]—I do not know what *dispersed* means, but the signal was made when part of the fleet was so separated.

In the course of the evidence, the witness denied that any shot had been fired near him, as stated by their own ships, through their irregularity, and said he was so far distant, and so very much engaged, that he could not attend to the business of the day.

Admiral Montague. Captain Digby, you are an old officer, and have had the opportunity of sailing with able and experienced commanders, I therefore desire you will acquaint the Court, if, in any instance within your own knowledge, during the time the British and French fleets were in action, that Admiral Keppel neglected to do the utmost to burn, sink, and destroy the enemy, having it in his power so to do, or negligently performed the duty imposed on him? *Captain Digby, of the Ramillies.* I have always had the greatest esteem, and the highest opinion of Admiral Keppel, as an officer; I have so still; but I have been giving evidence upon facts, and the answering that question would be judging upon them, which I have no right to do.

Admiral Montague. In both articles of the charge, Admiral Keppel is charged with running away from the French fleet. Did you
C that

that day see him run away from them, instead of advancing to renew the engagement, "as he might and ought to have done," which are the words expressed in the charge:—[The charge was then read, and an objection started by Sir Hugh Palliser to the question, as contrary to law: Upon which Admirals Montague and Arbuthnot said, they did not care sixpence in this case for law; we come here to do justice, and hope, in God's name, it will be done.]

Admiral Montague. If Admiral Keppel ran away, Capt. Digby did so too; and I suppose every part of the fleet followed their leader. Did you that day run away from the French fleet?—No.

WEDNESDAY, Jan. 13.

Continuation of Captain DIGBY's Evidence.

ADAMIRAL *Montague.* In the second article of the charge against Admiral Keppel, it is stated, that he did not collect his ships together in the morning of the 27th, when the French attacked him: Was not the van and centre of the English fleet engaged as they passed?—A great part of them were.

Was the ship you commanded engaged?—Yes.

What was the condition of your ship?—Our main-top-sail was cut to pieces, our standing and running rigging very much cut, so that we were not able to wear for some time. The fore-mast wounded in several places, and in one place it was cut one-half through. Several of the other masts were wounded; the main-yard and main-masts in particular.

Was the situation of your ship such as you could have renewed the attack, if the Admiral had tacked immediately after the enemy?—I do not think my ship was in a condition to seek an attack for a good while.

How long after was it before you could have renewed the attack, if the Admiral had thought proper so to do?—It was near seven o'clock before I was able to tack. The lee-leech main-sail being so cut, that I could not set it upon the other tack, which was necessary, on account of my being so far to leeward.

Was not you to have led the van on the tack, when the Admiral had led his head to the enemy?—No.

Did you tack?—Yes. [Admiral Keppel observed, that Capt. Digby, the day before, had said, that though he was not in a condition to seek to renew the attack, yet, if an attack had again been made, he considered himself in a condition to support it, there being a great deal of difference between attacking and being attacked.]

[It was remarkable, this answer had not been taken down by the clerk of the court, in these terms, which were acknowledged by Capt. Digby to be his. Mr. Gurney, short-hand writer to the Admiralty, was in the same predicament. Admiral Montague expressed his resentment

sentment at this misconception, and insisted that the Captain's words should now be properly taken down.]

Sir Hugh Palliser now wished to ask some questions of the evidence; but as he on the day before closed his examination, it was decided he could not ask any further questions till the Admiral had concluded his cross-examination.

Admiral Keppel. What force of large ships did you, on the 23d, discover the French fleet to be composed of?—I could not count them.

How far was the Vice-Admiral of the Red and his division from you at the latest period of the day?—As the fleet had been endeavouring to get into the line of battle, I was nearly so, though not got into my station, in point of distance from the Vice-Admiral of the Blue; that will determine my distance from the Vice-Admiral of the Red.

That is not sufficient. Can you say how far his division was from you?—He was at one end of the line and I at the other, but the day was so hazy that I am not sure I saw him.

Could Captain Digby, with a squadron of ships under his command, while the French were in the situation described on the 24th, 25th, and 26th, with such weather, wind, and sea, as he has described, and seeing an enemy of equal force, to the leeward, in the position he has stated, have hesitated one moment, on account of the weather, to have led his squadron down to battle?—*I think I should not have hesitated.*

Can Capt. Digby inform the court of the relative situation of the English and French fleets, at day-light of the 27th of July?—As well as I recollect, we were both on the larboard-tack, the French fleet about six, seven, or eight miles to windward of us.

What was the situation of the Vice-Admiral of the Blue and his division, with respect to the Victory at that time?—They appeared to me to be on the Victory's lee-bow, but I am not sure.

What distance do you think they were from the Victory?—I cannot recollect.

Can you recollect what sail they were under?—cannot.

How was you situated in the Ramillies at this time, relative to the Vice-Admiral of the Blue and the Victory?—I have said that I cannot recollect, but I remember to have ordered my officer to keep on the Vice-Admiral of the Blue's weather-beam, a mile at least, and when I did take notice, he had kept still farther.

What hour of the day was this, and where was you then with respect to the Victory?—On the signal being made for the ships to chace in the morning to windward, I set my stacing, and the period that strikes me strongest was just after we tacked, between eight and nine.

Was there any greater inclination when the ships were ordered to chace to windward, of the French intending to fight, than on the preceding day?—I think not.

Had the Admiral formed a line in the morning, must he not have bore down to join the ships to leeward, or have shortened sail and

called back the red division, and thereby have increased his distance from the French?—He certainly must have bore down, and many of the ships to windward, and would have in course increased his distance.

Can you inform the court the exact time when the French tacked from the larboard to the starboard?—I cannot from my memory say the exact time, but I believe it was about three quarters of an hour before we tacked.

After the English fleet wore about from their starboard tack, was there any sort of change in the wind?—It favoured us.

When the wind favoured us, did you lay up to a part of the French fleet?—I did.

On what tack were the French when the engagement began?—On the larboard.

Did you know how they got upon that tack and when?—It was very thick, and I did not know.

Had you lost sight of them for any time?—I think we had.

When you discovered them again, were they upon the larboard?—They were.

Do you recollect how long it was, upon your discovering them again, before the firing began?—I was at breakfast in my cabin about eleven o'clock, and did not see them on that tack, till my officer told me there was firing a-head.

Were the greatest part of the British fleet, when they came to battle, in a situation speedily to support each other?—I could be no judge of the Vice-Admiral of the Red's division. I know that where I was, I was supported by the Admiral and his seconds.

Can fleets on different tacks at any time fight ship to ship, with or without being in a regular line?—I think not.

You have described yourself to be near the Admiral, and supported by him, when you and the English Admiral were engaged with the French. Was that part of the French fleet in a regular line as you and the Victory passed them?—No.

Were any of them right to leeward of the others?—There were some of them a good deal so, but whether directly I cannot say.

Were there more British or French ships engaged close, I mean engaged LIKE MEN, not at a distance?—My attention was so much taken up with my own ship, I could only observe those just about me. I saw the Victory and a cluster of ships about her.

At what hour in the afternoon of the 27th of July, did you first see the Victory on the starboard tack, standing to the southward, after she had passed the rear of the French?—I had not an idea of time after the engagement began.

Did you see her wear from the larboard tack to the starboard?—I did not.

Admiral

Admiral Keppel. Time is the most material thing to ascertain in the course of my duty towards my King and country on that day ; therefore as Capt. Digby said that he saw a cluster of ships about the Victory, without knowing what ships or how many, I beg, I intreat, and demand of him to say, at what time that was?—Not long after the Vice-Admiral of the Blue had done engaging.

Did you see at what time the Vice-Admiral of the Blue had done engaging?—I was told so.

At what hour?—I do not know.

When you were to the leeward of the Victory on the starboard tack, in any part of the afternoon from three to six, were there any other ships of the British fleet to leeward near you?—There were.

Being then desired by the prisoner to say, Whether at any time from three to six o'clock in the afternoon of that day, he saw any ship to leeward of the Victory on the starboard tack?

The witness answered, That there were four or five, besides the Ramillies ; he took two of them for the Robuste and the Sandwich, but could not tell the names of any others ; he thought he saw the Victory once during that space leading down from the wind towards him, and these ships ; but, from his extreme attention to his own business, he could not be certain ; that between three and six, the ships which had been near the Ramillies, left her, one after another. It was within an hour of dusk, or less, when his officer reported to him, that the signal of battle was hauled down on board the Victory ; he was just then wearing after standing into the fleet ; very soon after which, he got into his station astern of the Vice-Admiral of the Blue, whose lights he kept sight of all night. In the morning, at day light, he found himself near the Formidable, and had the Victory upon his lee-bow, about one or two miles off.

The next point of his cross-examination was, respecting the escape of the three French ships in the morning of the 28th ; he said, that the wind that morning was west-north-west ; the weather was more moderate than on the preceding day ; but he thought it blew fresh, with squalls of rain, and a high swell. That it was a wind favourable for those ships to get into Breit.—And, speaking of his own ship, she was not, he said, in a condition to chase, as a man of war should chase, and to entangle himself upon a lee-shore, and an enemy's coast.

He recollected that several ships, his own amongst others, made signals that morning, whilst the Admiral lay with his head to the northward, that they wanted to put up their rigging.

Admiral Roddam. What were your reasons for thinking that the French did not mean to come to an engagement after the first day?—Because they might if they had chosen it.

Admiral Pye. Had the English Admiral formed the line on the 27th in the morning, would it have been in the power of any part of the English fleet to have brought on the engagement that day?—*I think not.*

Sir Hugh Palliser. If the signal had been made for the line of battle, in forming it, would it have been necessary for the Admiral to have bore down to the wake of the Vice-Admiral of the Red's division? And would not the Vice-Admiral of the Red's division engage in that case, in like manner, as they did, excluding only the Duke, which was a long way to leeward?—Had the signal been made, the Red division must have shortened sail.

If the French had not intended to bring on the action, would they have tacked the second time, edged down and attacked us in the situation we were in?—I have not said that the French did not mean at that time to attack us, they did not appear to mean it in the morning.

[Capt. Digby begged leave to inform the Court, that he conceived the short-hand writers did very wrong in catching at every word which he said in explanation; that on many occasions they set down words not spoken, censuring the questions and answers, and as the clerk took the minutes from them, when he was at a loss, begged the Court to consider whether this was to be admitted.]

Admiral Pye. The clerk is to receive no information from the short-hand writers; the Court has no connection with them. He is to receive explanation from the mouth of the witness alone.

Sir Hugh Palliser. Was not your ship one of my division?—It was.

You describe your situation in the action to be next to the centre. Were any other ships in the same division, in the same situation, in consequence of the signal to chase?—I do not know of any others.

You have described the situation to be such that the ships could not support each other. [Here Sir Hugh was reminded that Capt. Digby said he could only answer for his own ship, which was supported by the Admiral and his second.]

Sir Hugh Palliser. If ships that chased, and your ship, had engaged with the centre division, would the other ships of the Vice-Admiral of the Blue's division have been in a situation to support each other equal to the rest of the fleet?—I did not chase; and as I was a-head of the Admiral, when the chasing ships engaged, as I believe they did a-stern of me, I do not know their situation; but that they were a good way to windward just before I engaged.

You have not said what must have been the situation of the rest of my division?—I have not said where the chasing ships engaged; but if they all were separated from their division, they certainly could not support it.

You have described, that the French fleet were not in a *regular* line of battle; did you observe one ship to leeward, and shot out from it by other ships closing, to windward of which one of our ships, supposed to be the *Courageux*, passed between her and the French line? Did you observe any other ship of the French fleet so far out of the line?—I here was one ship to leeward of the rest, but I cannot judge of the distance of the other.

Did

Did you observe that the irregularity of the French line was more than could have been expected from their having been engaged with the ships that passed before you?—There was an irregularity, but what it proceeded from I do not know.

Whether the Admiral, with his own division, and that of the Vice-Admiral of the Red, and such of the Vice-Admiral of the Blue's as had joined, did tack and double when the enemy did continue the action?—The Vice-Admiral of the Red, and his division, passed to windward of me, just as I came out of action; but I believe the action was not renewed upon that tack.

Admiral Keppel. I have no objection to all these questions, but I conceive that the Vice-Admiral has no right to cross-examine upon my questions. It misleads the evidence, *though it cannot affect me*, and forces me to ask new questions.

Sir Hugh Palliser. Did the Admiral and the other ships with him renew the action?—I believe not.

Did the Admiral, with the whole of the ships, keep so near to the enemy as to be ready to renew immediately the engagement, when the Vice-Admiral of the Blue came out of it, or to support him while he continued engaged?—I have already described my situation to be such about that time, the fleet being between me and the French, that it was impossible for me to know how they were situated.

Whether you mean to say that the Admiral did so or not?

Admiral Montague. You must not interrogate a witness what he means to say. Ask him to say Yes or No at once.

Sir Hugh Palliser. Did he keep at such a distance as to be able to support me?—I do not know.

Admiral Keppel. I beg to know whether the Vice-Admiral has a right to cross-examine upon my questions. He obliges me to make other questions, and to take up more of the time of the court than I wish to do.

Admiral Montague. He has no right so to do. It is unfair to the prisoner, unfair to the evidence, and tends to make him perjure himself, since it is impossible for him to recollect every word. I therefore beg that we may retire to decide on the propriety.

Before they retired, *Capt. Drake* asked, Was it the favourable change of wind, for the English on the 27th, or the inclinations of the enemy to come to action?—I believe the favourable change of wind helped.

After being out about half an hour, the Court returned, having agreed that neither prosecutor nor prosecuted shall cross-examine his own witness after he has been cross-examined by the other side, with this reserve, of calling the evidence in to *explain* any matter that may not be clear, but not otherwise.

Capt. Digby ordered to withdraw.

Admiral Keppel. I suppose, when I come upon my defence, I may call any witness I think proper?—*Court.* Certainly.

CAPTAIN

CAPTAIN WINDSOR, of the Fox frigate, was next sworn.

Sir Hugh Palliser. Did you receive any orders from the Admiral on the 27th of July in the evening?—Yes.

At what time?—A little before five.

What were those orders?—The orders I received from Admiral Keppel were to stand towards the Formidable with the Admiral's compliments to Sir Hugh Palliser, and to acquaint him, that he only waited for Sir Hugh Palliser and his division bearing down into his wake for him to renew the attack.

Did you commit those orders when you received them into writing?—No, Sir.

From whom did you receive those orders?—From Adm. Keppel.

Did you go on board to receive them, or was it by haling?—I did not go on board, I received the message under the Victory's stern.

Was it from the Admiral himself?—Yes.

Have you had any conversation since with any person to refresh your memory, as you did not commit it to writing?—No.

What time did you deliver your message?—About half past five o'clock.

Do you remember whom you spoke to?—I repeated the message twice to you (*Sir Hugh Palliser.*)

In delivering the message, did you absolutely deliver those words that the Admiral wanted me and my ships to join in the attack, or only *MY ships to come into his wake*?—I have *already* repeated to the Court the message, word for word, as I delivered it to you.

What answer did I make?—That *you understood me very well.*

Did I not bid you inform the Admiral I had repeated his signals for the ships to bear down?—I did not hear any such message.

Were not a number of ships pennants flying on board the Formidable at that time?—I think she threw out several pennants AFTER I had delivered the message.

What sails had the Victory set, when you received the message?—I do not recollect.

What signal had she flying?—I cannot charge my memory.

Do you remember your ships company giving three cheers to the Formidable?—Yes, in answer to three your ship gave to ours.

Did the Fox or Formidable give the first cheer?—The Formidable, I am sure.

What distance was you from the Formidable, when you spoke to her?—So very close, as to have our sails becalmed.

Sir Hugh Palliser. I have done with Captain Windsor.

Admiral Keppel. As Captain Windsor is in a lamentable situation (his arm being broke in the action) I shall not detain him now, but hope to have leave to call him when I am on my defence.

Admiral

Admiral Pye. Were there any signals flying on board the Admiral for the Vice of the Blue and her division to bear down, before you received that message, and at what time?—The distance of time was such, I cannot recollect.

Admiral Montague. Did you see Admiral Keppel with the British fleet run away from the French fleet the day of the action, or the day after?—No.

Admiral Buckle being in a very bad state of health, finding himself worse, and not able to bear the fatigue, desired to have that part of the act read, which makes it punishable by cashiering any officer, who quits a ship from the time of the beginning to the finish of the Court-Martial; unless through illness, which the Court must be judges of. The act being read, a motion was made, that Admiral Buckle's attendance be dispensed with, which was agreed to. The Court then (at half past three o'clock) adjourned until ten o'clock the next day.

THURSDAY, January 14.

THE Court was resumed at ten o'clock in the morning, and Capt. HOOD, of the *Robuste*, was called upon and sworn.

Admiral Keppel. Mr. President, I know it is expected by some, that after the history which the Court had received of the alterations made in Capt. Hood's log-book, by his order, since it was known that my trial was to come on, I should object to his evidence. But anxious as I am to hear the testimony of all that served on board my fleet, respecting the operations of that fleet, I rather wish to hear Captain Hood's evidence.

Sir Hugh Palliser. I beg Captain Hood to inform the Court, what those alterations were, before he gives his evidence.

Capt. Hood. Mr. President, before I proceed to give evidence, I beg leave to inform the Court of the nature, the sum and substance of the alterations I directed to be made in my log-book. I never conceived that the evidence of a log-book was held to be satisfactory, or that it could contain any charge whatever. The winds, the courses, the distances, in the *Robuste's* log-book, stand unaltered.

The corrections are in the narrative part: and not knowing but I should be called here as a prisoner, perhaps, and not an evidence, I was willing to have it correct.

I stand here an attacked man; from the 11th of August my character has been wounded. I have seen the abuse go forth into the world respecting me; letters have been sent to the first characters in the kingdom. In one paper, I was put under arrest for disobedience of orders; in others I was said to be broke; anonymous publications have said, that the rear division was the cause of our not succeeding that day. I was very much alarmed, when, in a public assembly, the whole of the rear division was blamed. I therefore thought it necessary to correct my log-book, for the honour and the safety

safety of the officers of that division. I shall beg leave to call the master of the *Robuste* to elucidate and clear up this matter; and I trust that I shall not be found to have done any thing to the prejudice of the Honourable Admiral. I beg also to call Lieutenants Pitt and Lumley, who will produce the original log-books, and by them the Court will see what alterations have been made. I conceive, that a Captain of the navy has a right to alter and correct his log-book; and if that right is taken away, he is in a most deplorable situation; my honour, my reputation, and my existence, depend upon it; and, I declare, that I will never set my foot on board a King's ship again, if it be not allowed.

Mr. Pitt and Mr. Lumley produced their log-books; and, on being called upon to take an oath of their being exact copies from the original log-book, they also owned they made some trifling alterations in the month of October.

The first question by Sir Hugh Palliser was then put,

What were the alterations you made in the log-book?—*Captain Hood*. The first alteration is in sending out the ships to chase in the morning; my log book first stated, "that the Vice-Admiral sent out the ships to chase;" I altered it to, "that the Admiral made signal for our ship, and others, to chase." The second alteration speaks more fully to the Admiral's signals, in the afternoon, to wear down. The other alteration is the seeing the three ships, in the morning of the 28th, which was omitted in the original. The log-book before the Court, speaks of the *Robuste's* bearing down to her station in the afternoon, and keeping as near to it as a disabled ship could, the Admiral making much sail.

Admiral Montague. What time was the signal made by the Admiral for the Vice of the Blue's to bear down in his wake, you being a disabled ship can tell?—The evening.

Admiral Keppel. Where is the entry of the log of the 27th and 28th, of the *Robuste*, as it stood originally?—Sir Hugh Palliser objected to his asking.

Sir Hugh Palliser. What situation was the French fleet in the night of the 27d, with respect to the British fleet, and on what tack were they standing?—The French fleet were to leeward, standing on the starboard tack.

How was the British fleet?—The British fleet was then laying too, on the larboard tack.

The French being on the starboard tack, and to leeward, and the wind W. N. W. had not the French the port of Brest under their lee?—They certainly had.

Did the British fleet continue to lay to all that night?—I think they did.

If the French Admiral had not intended coming to action, would he have continued upon that tack all night?—If the French Admiral's orders authorised him going into port, he certainly had it in his power.

Was,

Was, or was not, the French fleet the next day to windward of the British, thereby fixing the British between them and the port of Brest?—The French was certainly to windward in the morning consequently the British fleet was between them and the port of Brest.

From these motions of the French Admiral, did you imagine he meant to avoid a battle, or that he meant to bring one on whenever wind and weather would permit him so to do?—From the motion of the French fleet, they indicated to my mind, their intention was to keep the sea, of course he did not mean to avoid, and from the subsequent matter, I thought to engage the British fleet.

Endeavour to recollect the wind, weather, and sea, on the 24th, 25th, and 26th, if, during those days, you do not think it would have been disadvantageous to the French, to have attacked the British fleet on account of the wind and weather, they must have fought their lee guns?—The wind and weather during those days was squally, sometimes rain; it was rather disadvantageous for our fleet to have fought those days, more particularly the French fleet, because they must have fought their lee guns, being to windward, which they could not have done, I think, with any advantage.

In the morning of the 27th, was not the British fleet scattered, by which I mean, several ships of each division being in various bearings and distances from their respective line?—I was not on the deck till after the signals were made from the Admiral for the Robuste, and I think five other ships of the Vice of the Blue, to chase to windward, consequently cannot speak of the state of the fleet before that period.

Did not that signal cause that part of the fleet to be more dispersed and scattered than before?—I think those six ships, the Robuste and five others, chasing to windward, from, as far as I can recollect, between five and six in the morning until ten, carrying, during that short space of time, as much sail as it was their duty to do, the signal being thrown out for them to chase, must of course encrease the distance from the centre of the fleet, and thereby may be said to be more scattered and dispersed.

Did not that signal leave the Vice of the Blue with four ships only?—The Vice of the Blue's division consisted of ten sail. I have given the Court an account of six being ordered to chase to windward by signal, consequently there could remain but four with the Vice-Admiral.

What time did the British fleet tack altogether by signal?—I wish, in the course of the evidence I shall give this day, not to be confined to time precisely, it being difficult to determine it. As near as I can recollect, the Admiral made the signal for the fleet to tack together about ten o'clock.

Did not the Victory begin to engage the French Admiral in the centre of their line?—The Robuste chasing from the fleet that morning, threw her at too great a distance for me to judge of that event.

At what time did you see the French fleet in a line of battle that morning?—They began early in the morning to form; they were, I believe, completely formed between ten and eleven o'clock in the morning.

Did you see the Formidable come into action?—I saw her go into action, but I cannot tell precisely what time.

Did you see several ships in the van of the French line fire at her, which she did not return before she began close engaging herself?—I know that the French ships fired a great many shot at the Robuste, which she did not return before she came close enough to do execution. I judge the Vice-Admiral's conduct by my own.

Admiral Montague. Is that an answer to the question? We do not decide from your judgment of the matter. Speak what you saw with your own eyes. Did you see any shot fired at the Formidable? that is the question.—No. I did not see any, but suppose they did.

Admiral Pye. Did the Admiral go close hauled when he stood from the enemy, or from the wind?—I believe he was close hauled.

Were the whole of the Admiral and Vice of the Red on the larboard tack when the signal was made to wear?—I think the Admiral was on the larboard tack, I cannot speak to the whole.

From the description you have given of the Admiral and Vice-Admiral of the Red being to windward of the enemy with the body of the fleet about him, if instead of the Admiral being at two miles distance from the enemy, they had been as near as the Formidable was when she wore and turned her head to the enemy after the action, would it not have then been a favourable opportunity to attack the French after they broke up their line?—I do not recollect making use of the word body. I said many ships. If that number of ships I have described had been as near to the enemy as the Formidable, and the Admiral had thought that the ships were in condition to RE-ATTACK the enemy, it appeared to me to be a favourable opportunity for doing it.

If they advanced from the situation they were then in, do not you think that the French fleet might have been attacked and prevented from forming a new line of battle?—The situation of the ships being to windward of the enemy gave them an opportunity of attacking the enemy, provided the ships were in a condition, of which I cannot be a judge in my distant situation I can only judge of by position.

From the very brisk fire kept, and the very good behaviour of all our ships which did get into action, have you any reason to suppose, that the French fleet did not suffer in proportion to the English?—I had every reason in the world to believe that they did. I must conclude they did from the very brisk fire kept up by the British fleet. I judge they suffered in proportion.

Admiral Montague. Did you observe the masts and yards of the French fleet as much disabled as our's?—I do not recollect that either the English or French fleet suffered by their lower masts being carried away. I cannot say how far they might be disabled.

Admiral

Admiral Montague. Do you not think a ship may be so far disabled, without any of her lower masts being disabled, as not to be capable of pursuing an enemy for some time?—Certainly.

Admiral Montague. You have said that the *Robuste* was disabled after she came out of the action. Please to relate to the Court the state she was in after the engagement; and how many hours, or what time it was before she was able to pursue the enemy, provided the Admiral had thought proper so to do?—Shall I relate every particular?

Admiral Montague. I do not mean every brace and bowling, in which running rigging is included, but state the material defects.—The *Robuste* had one large shot through her mains, one through the centre of the fore-mast, and another oblique, two in the bowsprit, one material one in the mizen-mast, her main-top-sail-yard was shot away, and her fore-top gallant-mast was shot in two. She received two shot in the mizen-yard, under and over water eleven shot, three or four under water, one very dangerous, thirteen in her upper-works. Her main-top-mast was shot in two or three places, but not to prevent the ship from carrying sail upon it. I cannot speak the condition of her sails, they were so much shot; most of her braces, bowlings, and running-rigging, were shot away; many of her lower and top-mast shrouds. One of the shot between wind and water was a six-and-forty pound shot; it struck the ship five or six feet under water, and took place directly against a hollow beam, in consequence of which the ship made a great deal of water. I had given directions to wear my ship immediately on the *Formidable's* wearing, but the carpenter came and told the first Lieutenant, it was impossible to wear. I forgot to say, that two of her stern ports, on the weather-side, were shot away. My answer to that was, it was an evil I was obliged to submit to, and I continued on the tack, my intention being to renew the fight along-side the first ship I could come at.

Admiral Montague. We wish only to hear the defects of your ship, Captain, and not a relation of your valour and intentions. It is foreign to the question.

Sir Hugh Palliser insisted, that the last part should be put down to prove what might be done.

Admiral Keppel begged it might be so put down, though out of order.

Evidence continued. My first object was to repair the damages the ship had sustained, there was a great deal of water in the ship, and the people were extremely alarmed. I ordered the carpenters over the side to stop the leak; I fancy it was about three or four o'clock in the afternoon before I could put my ship's head the other way.

Admiral Montague. How long was it before your ship was in order to renew the engagement?—There was much water in the ship, and the people were very much alarmed.

President. What time was it before you would have been in a condition to renew the action?—It was full seven o'clock in the evening, or might be eight o'clock before the leak was stopped; I tacked my ship at four o'clock. Were

Were your sails and rigging at that time in a condition to renew the attack?—I should certainly have renewed the attack as soon as my leak was stopped.

Capt. Duncan. In the condition your leak was in when you tacked, do you think your ship was fit to have renewed the attack?—I do not think she was fit to fight in a line of battle.

Did you observe one of the French ships go away disabled in her main-yard, attended by a frigate?—Admitted by Admiral Keppel, and that the fleet was one less.

Would the manner of the attack I observed on a former question have required a pursuit, having stated the French fleet to have broke up their line, and their heads towards the British beginning to form a new line?—It depends very much upon the operations of the enemy's fleet.

Was not the enemy suffered to form a new line unmolested by the British, standing after the English fleet?

Admiral Keppel smiled.

Sir Hugh Palliser begged the Court to notice it.

Admiral Keppel. I beg the Court's pardon, I did smile, but will not again.

I don't recollect the time the enemy began to form a new line; in the evening I observed the enemy's fleet drawn up to leeward of us, but not in a well formed line, part of the rear appeared to me in some confusion.

Admiral Arbuthnot. If the Admiral had thought fit to have renewed the attack when the French line was broke, could you have obeyed his signal, and gone down to the enemy in the condition you were in?—I could not.

Did not Admiral Keppel stand away from the enemy from the time he passed the last ship of the enemy's line, during the whole afternoon of the night of the 27th, except during the intervals of the second time of his wearing in the afternoon?—I do not admit of two wearings after the British fleet wore to the southward with the starboard-tack on board, it continued the whole of the afternoon, and during the night the French were on the same tack.

Was not that as direct a course from the enemy as the wind would permit?—I take it the two fleets were steering on parallel lines, the British to windward, the French to leeward.

Were not the French at starting a-stern?—Yes.

In the situation you have described the two fleets to be in on parallel lines, do you think the British Admiral was flying from the enemy or running away. I will have it in the words of the 4th charge, "had it appearance of a flight?"—At that time there was appearance of flight.

Was there, at any time of the day, any appearance of flight in the British Admiral?—No. There was no other period than the one you

you have mentioned for asking the question ; the former part of the day was pursuit.

In the answer you have given to the Vice-Admiral's question, that the two fleets were on a parallel line, the British to windward, the French to leeward, did the French, in your opinion, chase the English Admiral, who was flying from them ; and do you think that the French, when to leeward, crowded all the sail they could to come up with the British Admiral, as the charge says, "*they pursued the British fleet, and offered it battle?*"—As near as I can recollect the position of the two fleets, about eight o'clock in the evening, or somewhere thereabouts ; the English fleet to windward in that parallel situation I have described, *were endeavouring to form a line of battle*, and had been *endeavouring all the afternoon*. The signal was flying ; the French fleet being to leeward, appeared to me to be doing the same at this particular time, which was the close of the evening. The van of our fleet seemed to be advanced before the van of the enemy, and, as well as I can recollect, the Victory seemed nearly opposite to the van. Fleets in that situation cannot be supposed to be either chasing or flying.

Admiral Montague. When the signal was made for your ship, &c. to chase to windward, did you think you were to make the best of your way to the French fleet ?—The chasing to windward increased the distance from our centre, and brought us nearer to the enemy.

Should you then, if the Admiral had given you no other orders, have engaged the enemy ?—Not without his signal.

Did you see the Formidable close engaged with some ships of the enemy a-head of the French Admiral in the beginning of the engagement ?—I cannot speak positively whom the Vice-Admiral began to engage.

Was not the Formidable as close, and as long engaged as the Victory was ?—I cannot say how long the Victory was engaged, but I can say I saw the Vice of the Blue engaged from the time he began until he passed the rear of the enemy's fleet.

Was not the Victory, when in action, supported by the whole of his own division, and part of the Vice of the Blue's division, which had joined them ?—I take it for granted, that all the Admiral's division did every thing that lay in their power to serve their flag.

Admiral Montague. Speak from your own knowledge, the taking it for granted will not do.—It is impossible, while in action, to see what other ships are engaged.

Was the Formidable supported by the whole of her own division, part of her ships being gone in chase by signal ?—No.

How many ships were in the stern of the Formidable ?—I believe six ; I cannot say any other.

How many ships remained a-stern of the Formidable while she was engaged ?—I cannot speak positively to more than six ; my ship was one of them.

Can you name any else ?—The Terrible, Elizabeth, Egmont, Worcester, and America. Are

Are you certain with respect to the Egmont and America?—We were standing upon different angles going down the line, I don't speak exactly, the America I know was to leeward of me. I cannot certainly ascertain the other.

Did the Admiral, with the van and centre divisions, with such of the Vice of the Blue's division as had joined them, after passing the rear of the enemy's line, immediately wear and double upon the enemy, and continue the engagement?—I don't know, I did not see them, being engaged at that time.

Did the Admiral remain so near to the enemy as to be ready to have renewed the engagement, when the Vice of the Blue came out to support him when in it?—I do not know.

When you came out of the engagement, how far was the Admiral distant from the French rear?—I judge the Admiral might be about two miles off the rear of the enemy.

Did you observe at that time which way his head was?—He was standing towards the enemy.

When was the signal for battle hauled down?—According to time in my ship, about two o'clock.

Did you observe the Admiral unbend his main-top-sail, while standing towards the enemy? [*Admiral Keppel*. If it will save time, I admit that I did.]—I was informed he did.

Did you observe the Formidable, as soon as she had passed the rear of the French line, wear and lay her head to the enemy?—I did.

Was not the Victory and the body of the fleet standing towards the Formidable and French fleet?—They were.

Did you observe afterwards some of the French ships wear and stand towards the Formidable?—I did not see the French ships wear at the time the Vice-Admiral alludes to.

Did you see them stand towards the Formidable?—Yes.

Did you observe her wear again, and lay her head towards the Victory?—I did not.

Did you see the Victory and Formidable meet?—No, I did not.

At the time you described the Admiral two miles distant from the enemy, standing towards the French fleet, did the body of the fleet appear to be within him?—There were a great many ships with him, I did not count them.

Was that the time you discovered the Formidable, and how far was she from the enemy?—The Formidable was a-stern of the rear of the enemy a small distance, as appeared to me.

Was not the Vice of the Red, and his division, at that time lying to windward of the enemy's rear?—At that time the Victory and Vice of the Red were to windward of the rear of the enemy.

Did you see the Admiral wear again and stand from the enemy? I saw the signal on board the Victory for the fleet to wear.

Did

Did they wear?—Yes, between two and three o'clock.

When the Admiral had wore, was the course he then stood from the enemy?—Yes.

Did you observe the French fleet break up their line, and become into confusion?—They did break up, but at what time I cannot say.

Was it at or about the time the Admiral wore, or was it before or after?—To the best of my recollection it was AFTER.

EIGHTH DAY, FRIDAY, Jan. 15.

AT ten o'clock the Court was resumed, when Captain Hood, of the *Robuste*, was again called to the bar.

Admiral Montague. Did you see the French fleet to leeward on the morning of the 28th?—I did not see the French fleet to leeward on the 28th, except three sail.

Admiral Montague. Did you see when the Admiral made the signal in the morning of the 28th for the three ships to be chased, any ships that made a signal to set up their rigging?—I saw the flag for some ships to chase in the south-east early in the morning. I do not recollect at that time to have seen any signal for ships to set up their rigging.

How long then was the signal made to chase?—The signal was out a very short time. I cannot say what time.

Did you set up that signal?—I did, and I fancy all the fleet made it.

Sir Hugh Palliser. By the Admiral's shortening sail, whilst standing towards the enemy, hauling down the signal for battle, wearing and standing to the southward, with the French fleet then a-stern, did you, or did you not, then conclude, that the Admiral had determined not to re-attack that evening?—I did not see the Admiral shorten sail. I cannot pretend to judge of the Admiral's determination.

Have you since been of that opinion, from the various motions of the Admiral, and from the Admiral's letter published by authority?

Admiral Keppel. I beg pardon; I conceive that letter is to be commented upon by itself. Captain Hood is to give an account only of what struck him at the time.

President. The Court only are competent to judge of that letter, in my opinion.

[Sir Hugh Palliser thought otherwise, and therefore the Court retired to determine on the point. After having been absent a few minutes the members returned, and the Judge-Advocate said, that the Court had agreed that the question was improper to be put.]

Sir Hugh Palliser. I shall beg the indulgence of the Court then, after I have produced and proved that letter to be the Admiral's, to call Captain Hood to this question.

E

Admiral

Admiral Keppel. Whenever that letter is produced, I shall admit it; and afterwards object to that question being put to any witness; since they can alone judge, and they ought only to speak, from what struck them at the time, and not from what they may have gathered from subsequent materials.

Sir Hugh Palliser. I shall then take the sense of the Court whether I may not ask such questions.

Admiral Keppel. I shall then object to it.

Sir Hugh Palliser then interrogated the evidence respecting those ships not being chased, which went to prove, that the ships were not in a condition to chase, as men of war should chase upon an enemy's lee-shore, all, or most of them, having in the morning made signals for setting up their rigging. He saw the ships some miles to leeward, making sail before the wind. He confessed that a signal was made in the morning to chase to leeward, but when it was seen that the fleet was in general disabled in the rigging, the signal for chasing was taken down, and the Admiral laid his head to the northward, to give his ships an opportunity to repair.

Sir Hugh Palliser. In the middle of summer, with short nights and moderate weather, do you apprehend that there was any imminent danger if the fleet had chased till they had seen those three French ships, and the rest of the fleet, into port?—I do not think there was any imminent danger, but the Admiral must be the best judge.

Captain Duncan. Was your ship, on the morning of the 28th, in a condition to have chased as a man of war should do?—The *Robuste*, on the morning of the 28th, was not in a condition to chase.

Admiral Montague. Do you think, supposing the British fleet to sail equally well with the French fleet, there was a probability of the Admiral's coming up with them before night, provided they had continued to fly from him?—I think not.

Admiral Montague. Supposing the British Admiral had chased the French fleet, and seen them go into port, supposing himself to be within four leagues of the French coast, and a gale of wind had come on, would not the British fleet have been in great danger in the condition it was, making the enemy's coast a lee-shore?—I certainly think the disabled part of the British fleet would have been in danger.

Admiral Montague. Had the French fleet, after the action of the 27th, when to leeward, continued to lay-to till day-light the next morning, do you not think that Admiral Keppel would have bore down and engaged them, provided the ships were in a condition so to do?—He certainly would.

Captain Cranston. In the morning of the 27th, what was the *Robuste's* situation with respect to the *Victory* and *Formidable*, when she was ordered to chase?—I have said, that I was not on deck till after the signal was made for the *Robuste* to chase. I therefore can take that situation only from report.

Was

Was you much to leeward of the enemy ?—Not much, perhaps a mile.

Captain Duncan. By your having chased to windward, did you not get sooner into action than you otherwise would have done ?—I believe not.

Had you been in a line of battle on the starboard tack, and of consequence in the Victory's wake, would you not have passed the enemy at a much greater distance than you did ?—I cannot answer that question.

Was the enemy's shore a lee one as the wind was on the 28th in the morning ?—The wind was at W. N. W. on the morning of the 28th.

Was that, or was that not, a lee-shore ?—It certainly blew on the Port of Brest.

Cross Examination by Admiral Keppel.

Admiral Keppel. Where is the entry of the Robuste's log-book of the 27th and 28th, as it stood originally ?—I really do not know.

Did you see any rough minutes of these two days transaction before they were entered in the log-book, and were they approved by you ?—I certainly did see it in a rough manner, and not knowing, at that time, but it was correct, it was inserted in the log-book.

Was it inserted by your approbation ?—I directed it to be wrote in the log-book.

When was it that the alterations and additions were made ?—I do not remember the day, but the Master having been already before the Court, I submit the day to his recollection.

As you cannot be precise as to the day, you can say, whether you then had heard of Admiral Keppel's intended Court-Martial ?—When I took into consideration the alteration and correction of the log-book, I had not heard of any intention that existed of trying Admiral Keppel.

When you ordered these alterations to be inserted, had you not then heard of the intended Court-Martial ?—I had not heard of Admiral Keppel's Court-Martial, but it was rumoured here.

Capt. Hood will be so good as to explain what he means by a rumour of a Court-Martial which he never had heard of ?—What I mean by rumour is, a great many people were talked of to be tried in common conversation.

When these alterations were actually made, had you then heard of Admiral Keppel's intended trial or not ?—I have already said that I had not heard of Admiral Keppel's intended trial.

Capt. Hood has referred to what his master said relating to those alterations ; may I beg to have the clerk's minutes on that article read ?

It was accordingly done ; and the minutes said, " That, to the best of his (Mr. Arnold's) knowledge, the alterations were made in

the log-book after it was known that Admiral Keppel was to be tried by Court-Martial."

The minutes neglected one material expression of Mr. Arnold's, which was within the recollection of all the Court. "I think the alterations were made (says he) twelve or fourteen days ago."—Captain Hood informed the Court, that it must be more, since he was in London, by public leave, twenty days, viz. from the 16th of December to the 3d of January. He then stated several reasons for invalidating the evidence of log-books, till he was stopped, it being foreign to the subject.

The President begged leave to remind Captain Hood, as he had appealed to him for the truth of his having been twenty days in London previous to the third of January, that if he meant to use *that* as a proof of his not having heard of the intended trial of Admiral Keppel, that before that time (that is, before he left Portsmouth on the 16th of December) it was known, though not officially, the trial was to come on.

Admiral Keppel. Then I am to understand, Sir, upon the oath you have taken, that you had not heard of my intended trial when you directed these alterations to be inserted?—I believe I have answered that question already.

I do not understand that you have; and I must beg of you to answer it now, straight and direct.—I beg my former answer may be read.

The clerk recurred to the former questions and answers, beginning with the words "When was it that the alterations and additions, &c."

Admiral Keppel. I beg my question may be again asked. Am I to understand, Sir, upon the oath you have taken, that you had not heard of my intended trial, when you directed those alterations to be made?—I had heard it as a common conversation, but no further.

Had you not heard, when the alterations and additions were inserted, that Sir Hugh Palliser had charged me with some offence?—I never heard of any charge, nor what the offences were. They had not come out to my knowledge.

Had you not then heard that Sir Hugh Palliser had exhibited a charge against me, though you did not know the particulars of it?—I had heard there was to be a Court-Martial, therefore I knew there must be a charge.

Had you ever conversed or corresponded with Sir Hugh Palliser, directly or indirectly, on the subject of Admiral Keppel's trial, before you made the alterations in your log-book?—I never conversed with Sir Hugh Palliser on that subject.

Nor corresponded?—Letters certainly passed between us, but nothing relative to this charge.

Did you ever converse or correspond with him on the subject of the log-book?—Never.

D.

Do you mean to say that you never conversed or corresponded with Sir Hugh Palliser on the subject of my trial, as well as on the additions to your log-book?—Never on the *additions to my log-book* till after the trial took place.

Was there nothing in regard to the trial neither?—At what time?

Before the alterations were inserted in the log-book?—Nothing; not the smallest communication.

What then led you to discover, *four* months afterwards, any error in the state of the transactions of these two days, which you did not discover at the time?—I was led to the discovery of the truth for the sake of *myself*.

Did your original log-book state that the Admiral was making much sail in the evening of the 27th?—I do not recollect that it did?

Do you know that it did not?—I do know it did not. I have said so before.

What hour does that insertion in the log-book relate to?—It relates to the night.

What hour is it put to?—As far as I can recollect, it is put to part of the first watch, and part of the middle watch, but no hour is mentioned; it is in the course of narration. As I am called upon to declare, I will do it to the best of my judgment.

Admiral Keppel. Mr. President, as that alteration in Captain Hood's log-book tends to affect my life, I shall ask him no more questions.

Sir Hugh Palliser here requested leave to offer a few words to the Court, in consequence of what Admiral Keppel had just said; and being indulged, he, in most virulent and violent terms, condemned what he called the Admiral's impeachment of Captain Hood's credit and character, and pledged himself to examine many witnesses in the progress of the trial, to resist, defeat, and confute, the cruel and invidious attack.

He was stopped in his career by the Court, who declared they could not sit and hear it called a *cruel* and *invidious* attack in the prisoner, to ask such plain and straight questions as were necessary to the investigation of truth.

Admiral Montague said, that he had heard no impeachment of Captain Hood's character whatever. The Admiral had stated a plain fact, which was acknowledged by the Captain, and that fact rendered him no longer eligible, however competent as a witness. The expressions of the accuser might be proper for Westminster-Hall, but they could not be tolerated in a Court-Martial.

Admiral Keppel said, that he had asked no indirect question of the witness. The alteration had been made, and avowed *it tended to affect his life*, and therefore he rejected his further evidence. With the most feeling sensibility, and the tear bursting from his eye, he exclaimed, that his astonishment could not be expressed, when he first heard that his conduct on the 27th and 28th days of July was accused.

accused. He knew of no one that could prove the charges laid against him, and was so unprepared, that he had almost determined to set up a paper to the public, intreating all those that could, to come and clear his innocence. He had, from that moment, prepared what evidence he could attain; and he hoped that his honour would come out unfulfilled. An involuntary burst of applause spoke, with the truest warmth of expression, how dear the character of that brave man was to the crowds that surrounded him, and how much they disapproved of the accusation against him.

It was determined that the speech of Sir Hugh Palliser should not appear on the minutes.

The evidence was then asked a few questions by the Court.

Admiral Montague. Upon the whole of the transactions of the British fleet on the 27th and 28th of July, did it appear to you, as an old and experienced officer, that Admiral Keppel did, on either of these days, tarnish the honour of the British fleet?—Before I can give an answer to that question, I must ask the President whether any part of my evidence is to be taken?

Your evidence is taken down, and stands part of the evidence.—I have long had the honour of knowing the honourable Admiral, and I still respect him, notwithstanding my evidence will not be farther requisite. His character is above my praises. I have given my evidence, as far as it has gone, with honour and integrity. The Court must therefore judge and decide upon that question.

Admiral Montague. I do not think that is an answer to my question, it is a part of the charge against the Admiral, and I should think that every Captain commanding the British ships on those two days, can acquaint the Court, whether, by the misconduct or neglect of Admiral Keppel, the honour of the British navy was tarnished?—The Court must know it from my evidence. I cannot be a judge.

Admiral Montague. Did you see him?—I have given my evidence.

Admiral Montague. Your evidence is to speak the truth, the whole truth, and nothing but the truth, so help you God.

Captain Cranston moved him to withdraw, which was accordingly agreed to.

MR. GRAHAM, purser of the *Arethusa*, was next called and sworn. Sir Hugh Palliser, perceiving he had minutes in his hand, questioned him concerning their authenticity and originality. Upon his examination it appeared, that the original log-book, made for the use of the quarter-deck, was lost about three weeks after the action on the 27th, and that those he produced were an exact copy as far as they went, of a copy truly taken from the original log-book: but that as Mr. Graham took them for his own satisfaction, and not for public inspection, he had, the better to distinguish them from each other, entered the general ones, particularly as to their order, and also as to the time when they were made; but the pen-
ants he had only entered in their rotation, as they stood in the original

ginal log-book. The justice of these minutes being thus ascertained, a motion was made for reading them. This was opposed by Captain Duncan, who said such a proceeding would be informal, and contrary to the practice which had hitherto prevailed on the present trial, or at former Courts-Martial, but that the witness, when questioned concerning any matter contained in his minutes, might, to assist his memory, refer to them. Here the Judge Advocate also observed, that the reading Mr. Graham's minutes would answer no purpose, as they were undated.

Sir Hugh Palliser then asked Mr. Graham what was the first signal made on the 27th of July?—The first signal made was for tacking. I believe that was about half past ten in the morning; when I say it was made, I mean it was repeated on board the *Arethusa*.

The examination was continued, as near as we could collect, in the following manner:

What was the next?—To engage, at five minutes past eleven.

Does the time the signals were hauled down stand in your book against them, or are they placed not against the signals, but apart?—They stand against the signals.

When was the signal to engage hauled down?—Twenty-six minutes after one.

What was the next signal, as it stands in your book?—A signal for wearing, two minutes after one.

What was the next?—A signal to speak with a particular ship to come within hail, fifty minutes past one.

What ship's signal was it?—The *Proserpine*.

The next?—The Union with a blue flag and a red cross, one prior in order, though not in my book, to that for the *Proserpine*.

When was it hauled down?—About twenty minutes past one.

When hoisted again?—About thirty minutes past one.

When again hauled down?—On board the *Victory* I cannot say, but on board the *Arethusa* at day-light next morning.

What was the next after the blue flag with a red cross, for the line of battle?—A blue pennant, at thirty minutes past two.

What the next?—A yellow pennant at the main-top-mast-head.

At what time?—I have not the time against the pennant.

What the next signal in order?—A signal for ships to windward to bear down into the Admiral's wake.

At what time was it?—Twenty-four minutes past three.

When was it hauled down?—At thirty minutes past three.

When hoisted again?—Thirteen minutes past six.

When hauled down again?—At day-dawn next morning.

What was the next?—Union and blue flag, with a red cross at the mizen-beak, for ships to windward to form a line a-head at cable's length; it was at thirteen minutes past six o'clock. What

What the next in order after twenty-four minutes past three?—A fellow pennant at the main-top-mast-head, for the Proserpine.

What the next?—A blue and white striped flag at the main-top-head, thirty-three minutes after four, for a particular ship, I think, to make more fail.

What ship's pennant was out?—A red one. The flag was hauled down directly.

What ship's signal was out; was there any?—I believe not.

Was the Duke's signal then out?—There were several pennants out when the Spanish flag was at the main-top-mast-head, but none while the blue and white flag was out.

Do you recollect what ships pennants they were?—I can tell their order and colour, but not the names of the two ships.

When was the Spanish flag hoisted?—Seven minutes past four.

What was the first pennant let fly afterwards?—A red one at the mizen-mast-head; I don't know when, they were flying together.

What was the next?—A blue one at the starboard mizen-topfail yard-arm.

Do you know the distance of the time between them?—No.

Sir Hugh Palliser. In the original minute-book, was the time as well as names set down?—There was a column for it, but I believe the significations were not inserted.

Does it contain them in order?—The first was the blue one at the starboard mizen-topfail yard-arm, and a yellow one at the main-topfail yard-arm.

Are they all mentioned in the original log-book?—Yes. There are two signals intervene between them, and several others which were flying with the Spanish flag.

Were the others, with their ships and times, ascertained in the original log-book?—The times were, but I cannot say as to the names of the ships and their order.

Why have you omitted both the names and pennants that were out when the Spanish flag was flying?—I have given a reason for it, by stating the intervention of two flags.

What were those two flags?—Two flags that were hoisted by mistake.

Can you name the pennants after thrown out?—Yes. A red pennant at the main-top-fail, a blue one at the same place, the same at the larboard yard-arm, a white at the fore-top-mast-head, a blue at the starboard main-top-fail yard arm, a red one at the same place, a blue one at the main-mast-head.

SATURDAY,

SATURDAY, Jan. 16.

MR *Graham* was again called in, and produced the *first* copy he made from the original book of signals kept on board the *Arethusa*, which book he yesterday mentioned was lost about three weeks after the action on the 27th of July.

Admiral Keppel. Have I seen you or your minute-books, or conferred with you about either of them?—You have not.

Ordered to withdraw.

Capt. **ALLEN**, of the *Egmont*, was then called by Sir Hugh Palliser, as a witness in support of the charge.

Sir Hugh Palliser. When did you first see the French fleet?—I cannot justly say.

On the day when you first saw them, what time of the day was it?—Between two and three o'clock, I think.

During that afternoon, and in the evening, did they appear to you to be forming a line of battle?—No.

How were they situated with respect to the British fleet?—It is a long while since, and I cannot charge my memory with any thing of that sort. My log book and journal are at Plymouth.

Do you recollect their situation the next morning?—I do not.

Do you remember when you first saw them on the morning of the 27th?—I do.

About what time?—Near five o'clock.

When did you first discover them to be in a line of battle?—Not at all.

On what tack were they?—On the larboard tack.

At what time?—Between five and six.

Did they appear to you at no time to be in a line of battle?—No.

In the morning of the 27th of July, what was the situation of our fleet with respect to each other?—I cannot particularly answer; being far to leeward I could not distinguish the situation of the rest of the ships to windward.

Do you remember the Admiral's making a signal for several ships of the Vice Admiral of the Blue's division to chase to windward?—I do; but not how many.

At what time?—Near six o'clock.

Do you remember the names of any of the ships?—The *Egmont* was one.

Can you name any of the others?—The *Terrible*. I do not recollect any more.

Were their several pennants up?—I only recollect these two.

Did not a number of ships make sail and chase at that time?—There might be three or four.

Did those ships, whatever their number were, separate and scatter that part of the fleet more than they were before?—They made a greater distance, no doubt, but they were not scattered.

Did they all preserve an equal distance from each other while chasing?—No.

When did the French fleet tack from the larboard to stand to the starboard?—I cannot ascertain the time.

President. When you saw the signal thrown out for those ships to chase, what did you conclude, in your mind, was the cause of that signal?—To get to windward, and close with the Admiral.

Sir Hugh Palliser. When the French fleet tacked, did they tack together, or successively one after another?—It is out of my power to tell.

At what time did the British fleet tack all together by signal?—The general signal was made at ten. I had tacked before, so they did not all tack together.

At what time was the signal made for battle?—I saw it a quarter after eleven.

What part of the French line did you begin to engage?—I engaged the third ship, but they were not in a line.

Were you at that time accompanied by any other ships of your division so near as to be able to support each other?—I was so attentive to my own ship, that I do not recollect any other than the Terrible, about a mile from me.

Was that a mile a-head or a-stern of you?—A-stern.

How near was the ship next a-head to you?—I do not remember any other ship but the French man of war, there being so much smoke.

In that part of the engagement did you receive any damage?—We were too much engaged with firing on the enemy to attend to our own damage.

Do you not think the damage you received in that part of the engagement was greater than it would have been, if you had fought with the rest of the Vice-Admiral of the Blue's division?—No.

If you had engaged, in company with other ships, would not they have shared in the fire from the enemy, which was wholly levelled at you when alone?—That is as the enemy pleased. They might fire at *me* alone, or they might not have fired at *me* at all.

From the place where you began to engage, did you proceed till you had joined some other part of the British fleet, and was that your own or the Admiral's division?—I did proceed, and joined the Admiral's division.

Did you pass a-head of the Admiral of your own division?—No.

Did you pass a-stern of him?—I did not.

In what situation was the Vice-Admiral of the Blue when you joined the Admiral?—He was a-stern on the *lee-quarter*.

Was

Was he in that situation from you when he first began to engage?
—No.

How then?—Upon the lee-beam, about three miles and a half or four miles.

When you joined the Admiral's own division, did you continue to engage there?—I did.

Did the confusion which that part of the fleet was in occasion some of our own ships to fire into your ship?—*I saw no confusion at all.*

Was you fired into by any of our own ships?—I was.

By what ships?—The Thunderer.

What damage did you receive by her shot?—The sheet-anchor was broke; two cutters were shot through; some other shot in the ship's side, but no men were either killed or wounded.

Was not your mainmast shot on the larboard side?—Not that I recollect.

Was it not understood at the time that a man was killed on the quarter-deck by the Thunderer?—No; it was proved he was killed by the French three-decked ship that lay along side of me. Give me leave to explain how I came along-side the Thunderer. It was no fault of Captain Walsingham*.

Did any other of our own ships fire over you, or into you, on that day?—No.

While the Thunderer and you lay in that position, did not the enemy's shot go over both, or hit both?—I cannot say that.

Were they within distance for the shot to reach or go over both?—I was within pistol shot.

Was you at this time a-head or a-stern of the Victory?—A-stern.

Did you proceed in the situation you were in, till you passed the rear of the enemy's fleet?—I did.

How far was the British fleet extended from van to rear, at the beginning of the engagement?—I do not know.

Was not the Victory while she was in action, supported by the whole of the Admiral's own division, and by part of the Vice of the Blue's?—I cannot tell that. There were many ships engaged.

Can you tell who supported the Formidable when she was engaged?—I cannot particularize. There were three ships a-stern engaged, among which the Vice of the Blue was one.

After the Admiral, with the ships of his division, and the others with him, had passed the rear of the enemy, did he wear and stand towards them?—He did.

At what distance from the sternmost ship of the enemy did he wear?—I cannot ascertain the distance, it *was not far*.

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How

* The Court were perfectly satisfied it was not, and did not desire to hear the reason, since such a circumstance is so common in large fleets.

How long was it after he had passed the rear-most ship?—That I do not know neither.

Did you continue to stand beyond them longer than the Admiral, or the same time?—I continued on the starboard tack till six o'clock in the afternoon, having four feet water in the hold, which obliged me to do so.

From the very brisk fires kept up by our ships that were engaged, do you think that the French ships were not damaged at least as much as ours?—I can answer for no ships firing but my own; neither can I say what damage the enemy received.

Do you not think the damage on their side was in proportion to ours?—That I cannot say. I have reason to suppose there must have been damage.

After you ceased firing, did you take notice of the Vice-Admiral of the Blue, and your own division?—Not till six o'clock the same evening.

Did you see the Victory when she wore?—I have already said I did not see the Victory wear.

Did you see the Vice-Admiral of the Blue at that time?—No.

When was the signal for battle hauled down?—I cannot immediately say.

Can you say whether it was before or after the Admiral wore?—I cannot.

Did you not see the Admiral unbend his main-top-sail?

Admiral Keppel. That has been admitted again and again; if the accuser will state at what time he alludes to, I will agree or not agree to it.

Sir Hugh Palliser. When standing a second time to the enemy?

Admiral Keppel. I did unbend it.

Where was the Vice of the Red, and his division, about that time, while the Victory was standing towards the enemy?—I was so attentive repairing my own damages, that I cannot immediately say.

Did you see the Victory wear the second time?—By the same rule, I did not.

When did you first see him with his head to the Southward?—Between four and five o'clock.

Was there a number of ships about him at that time?—There was.

Did you take notice when the French broke up their line?—I did not perceive them in any line, as I have said before.

Did you observe them to be in a crowd different from what they had been during the action?—I did not see them in a crowd at any time, before, during, or after the action.

Did you observe when they began to form a line of battle with their heads to the Southward?—I did not.

Was

Was the Vice of the Blue, and part of his division, the ships that last came out of the action?—I cannot tell.

Admiral Keppel. I do admit it; he must be the last that came out of action, from his situation in it.

When the Victory wore the second time, did she stand to the southward?—I did not see the Victory wear a second time, but between four and five o'clock she was standing to the southward.

Was the French fleet then a-stern?—No, they were not.

Where were they?—They appeared to me, the greatest part of them at least, a-breast of the Admiral, to leeward.

At what time are you speaking of?—About six in the afternoon.

Did you observe what sail the Victory had during the afternoon?—I was in such position as not to be able to judge.

Did you see the blue flag at the mizen-head hoisted that afternoon, for Sir Hugh Palliser's division to come down into his wake?—I did.

About what time?—About five o'clock in the afternoon; I cannot be particular.

Was your ship then to leeward of the enemy?—A-head, and to leeward withal.

At the time you mention that you saw the French fleet at six o'clock, were they forming in a line of battle?—They appeared to me to be forming.

Did the Vice-Admiral of the Red bear down into the Admiral's wake that afternoon?—I did not see him bear down. He appeared to me to be a-head of the Admiral.

Before that happened, did you not take notice of his being a-stern of the Admiral?—I did not.

What time that afternoon did you get to windward of the Victory?—I tacked at six o'clock at nearest, and was to windward of the Admiral a little before seven.

Did you observe that afternoon a number of ships pennants out to bear down, and your's among the rest, on board the Victory and Formidable?—I did.

Where was your ship at that time, with respect to the Formidable?—To windward.

At what time was that?—Near seven o'clock.

Did you observe the Fox frigate come to the Formidable?—I did not.

After you had made sail in consequence of that signal, and your pennant being hawled in, did you again bring to?—I did; for we had much water in the hold at that time, going too fast for the people overboard to stop the leak.

Did you observe any signals made in the night by the French fleet, or were you informed of it at the time?—I saw some rockets

rockets thrown, which I apprehended were signals for some of the French ships.

Did you perceive them from that time to go away?—No, I did not.

Were they, or part of them, in sight the next morning?—I saw three sail between three and four o'clock in the morning of the 28th.

Was there any more seen from your ship's mast head, supposed to be French ships?—I neither was informed or did see any more than the three sail.

What did you judge those three sail to be, line of battle ships or frigates?—I judged two to be line of battle ships and one frigate, but in that I may be mistaken.

How far do you think those ships were from the British fleet?—They might be six miles.

Do you speak of them all, or the farthest of them?—The nearest of them.

Do you mean at day light when you first saw them?—I do.

Whereabout was the Egmont at that time, with respect to the rest of the British fleet?—About four miles a-stern of the Vice of the Blue, to windward of the Admiral and the rest of the fleet.

Were not those three ships nearer to the British fleet than they were to the Egmont?—I think they were, and to leeward.

What latitude was your ship in at noon of the 28th by reckoning?—That the log-book and journal will ascertain.

What was your distance from Ushant that day?—I do not know; the log-book must tell you.

What kind of weather was it that morning?—As near as I can recollect it was hazy.

As to wind?—It blew fresh.

Cross Examination by Admiral Keppel.

Admiral Keppel. At the time the signal was made for the Egmont, and other ships of the Vice of the Blue's division, to chase to windward in the morning of the 27th, can you recollect what sail the Vice-Admiral of the Blue was under?—As near as I can, the top-sails, and fore-sails, and the fore-topmast stay-sail. The position the Egmont was in, being a-head, I cannot recollect seeing whether she had her main-sail, and main-topmast stay-sail, or not.

As an officer of experience, when a signal is made for your ship, or any ship, to chase to windward, does it direct you to stand on the same tack you set out on five hours, or to tack, and ply to windward in the wind's eye?—No, it does not, but to ply to windward.

I think you said you did tack before the general tack. I ask you whether, if the other ships had tacked as soon as you, they would not have come to action as soon, and given you succour; and whether their standing much longer time the same tack, if they were scattered and extended, were not the cause of their being so; or was it the fault

fault of the signal to chace to windward?—There is no doubt but, had the ships tacked as I did, they might have been in action as soon the Egmont. It was not the fault of the signal to chace to windward.

Then, if they had got into action as soon, or nearly as soon, and had bore down and closed with the centre division as the Egmont did, whether that would not have given strength to the centre division, and to the division a-stern of it?—Undoubtedly it must.

I think Captain Allen has described himself to have been at the time he was in action, joined with the centre division, the Vice-Admiral of the Blue and two other ships of his division a-stern of the Egmont; the situation the Egmont was then in, did it not give succour and strength to the Vice-Admiral of the Blue?—IT DID.

Some stress has been laid on the Thunderer's firing into, over, or at the Egmont. I ask you whether, in so large a number of ships following one another, that will not happen in all engagements, in some degree, when ships are so engaged and so obscured from one another by smoke?—It often happens in great fleets unavoidably.

You say you stood upon the starboard tack till six o'clock in the afternoon repairing damages, and that you saw the Victory on the same tack between four and five. Did you see the Victory leading, at that time, two or three points from the wind down upon the ships to leeward?—I did observe it, and judged it was to succour the disabled ships that lay repairing a-head and to leeward of the British fleet.

Was the Victory's standing two or three points from the wind, nearing or going from the enemy's fleet?—It was nearing the enemy's fleet, and they appeared to me to edge away also.

Can you say what other of the British ships, between four and five, were to leeward, on the lee-bow of the Victory, about the Egmont, in the same condition with himself?—There were four sail beside the Egmont to leeward.

When you joined the Vice-Admiral of the Blue, about seven o'clock, did you then see the signal on board the Victory for the line of battle a-head, and the blue flag under it*?—I did.

Had you ever seen it before in the course of the afternoon?—I had.

When you was to windward, at seven o'clock, of the Vice-Admiral of the Blue, did you see him with the same signals out as the Victory?—I only saw the signal flying for bearing to the Vice-Admiral's wake with my signal.

I would ask you, whether in the condition your ship was in after the action, and in the morning of the 28th, you was fit to chace like a man of war, and to entangle yourself on a lee-shore, on an enemy's coast, without being in imminent danger?—She was not in a condition to chace, much less to be entangled on a lee shore, on an enemy's coast.

Admiral

* In bearing down to the Victory.

Admiral Montague. You will please to acquaint t^e Court of the defects of the Egmont after the engagement, with respect to her masts, yards, sails, rigging, and hull.

I must beg leave to refer you to the defects given in to the Commander in Chief the morning after the action. They are really too long and too numerous for the Court to attend to.

Admiral Montague. We only wish to hear the principal defects.

We received six shot between the lower part of the whale on the starboard side, and five streaks below that; the head of the main-mast had two or three shot through it; the mizen-mast shot totally away; the head of the mizen-mast had two shots; the crotchets and mizen-top sail yard, the main-yard, and the starboard yard-arm, shot through; one shot through the flings of the main-yard, one shot through the larboard, and the most of the larboard and yard-arm shattered. The head of the fore-top-sail shortened, the fore-yard shot through in two places, the fore-mast and main-top-sail yard shot through, one shot through the centre of the foremast, the head of the foremast much shattered, and the main-stays.

The Court are satisfied with these defects that your ship was disabled. Leave off here, and tell us

What time was it (how many hours after) before your ship was in a condition to renew the engagement, if the Admiral had thought proper so to have done?—Three hours and a half.

Then, Sir, was it not more proper, and prudent, in the Admiral, to lay to and repair his disabled ships before he renewed the attack, than to have returned to the engagement immediately?—Assuredly it was.

Then Sir, upon the whole, did it appear to you, as an old experienced officer, that Admiral Keppel did, by his conduct either on the 27th or 28th of July, tarnish the honour of the British navy?—No; and I should not take upon me to say thus much if I had not been forty years at sea, and three and thirty years an officer. I look upon it the Admiral did *behave with much Honour, instead of tarnishing the British Flag!*

TENTH DAY, MONDAY, Jan. 16.

WHEN the Court was expected to open this morning, as usual, the Judge Advocate reported, that Admiral Roddam had been taken ill, and Dr. Johnson, his physician, was of opinion, that it would be unsafe for him to attend the Court; and, as one day's absence would preclude him from giving a vote in the division, the President and the rest of the Members, unwilling to lose the assistance and advice of so able and experienced an Officer, had therefore resolved to continue the adjournment till the next morning.

ELEVENTH

ELEVENTH DAY, TUESDAY, *January 19.*

AT ten o'clock the Court met, agreeable to adjournment, when Mr. Cassey, master's mate of the *Arethusa* frigate, produced a copy of the minutes from that ship's log-book of the transactions of the 27th and 28th days of July. They contained an accurate relation of the signals, which, as they are exactly the same as those of Mr. Graham, we do not think a repetition would either please or be necessary to the public in point of information. Sir Hugh Palliser questioned him narrowly as to the authenticity of the minutes, which being fully ascertained, they were produced, and make a part of the evidence.

CAPT. ROBINSON, of the *Worcester*, was then called and sworn.

Questions by Sir Hugh Palliser.

When was the French fleet first seen?—On Thursday, the 23d of July.

At what time?—I believe about one o'clock.

During any part of that afternoon, did they appear to you to be forming a line of battle?—There was an appearance of it, but I cannot be certain.

On what tack was the French fleet at dusk that evening?—I believe on the starboard tack, standing to the southward, rather towards the British fleet.

Were they at that time to leeward of the British fleet?—They were.

How was the wind?—Westerly, or W. N. W.

Was the French fleet then between the British fleet and the port of Brest?—Most certainly.

Where were they the next morning?—In the N. W.

Was not the British fleet then between the French fleet and the port of Brest?—Certainly.

What do you apprehend to be the cause of the French fleet getting to the N. W. and placing the British fleet between them and Brest?—I apprehend it was owing to the wind's shifting, as well as to the British fleet laying to.

What time did you first see the French fleet on the morning of the 27th?—I did not myself see them till five o'clock.

Did they appear to you to be in a line of battle in the morning of the 27th?—They appeared in a straggling line, but not a close one.

About five o'clock in the morning was that?—Yes.

After that early part of the morning, did the line appear to be more perfect and more close?—I did not observe them after, for I was engaged in making sail.

In the morning of the 27th, was the British fleet scattered and dispersed?—They were not in a line of battle, but in the usual state of sail.

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President

President. What occasioned your making sail in the morning of the 27th?—The Worcester's signal was made on board the Admiral for chasing, with other ships, to the windward.

What did you judge at that time was the Admiral's intention for making that signal?—I judge, that as every effort had been made in vain after the 23d to bring the French to an action, the Admiral made the signal for these ships to chase to windward, to endeavour to bring the French to action if possible.

Sir Hugh Palliser. How many signals of the Vice of the Blue's division were made at that time?—I believe about that time there were six.

Did that signal leave the Vice of the Blue with more than four?—No.

Sir Hugh Palliser. Did that signal cause that part of the fleet to be more scattered than you say they were before?

Admiral Keppel. Capt. Robinson has not said they were scattered.

Sir Hugh Palliser. Separated?

Admiral Keppel. Nor separated. I beg that the words of the evidence may be attended to.

Sir Hugh Palliser. Did that signal cause that part of the fleet to be separated and dispersed?—It certainly enlarged the distance between the centre and the chasing ships.

Did it not separate them from their own flags?—It certainly did.

Did the British fleet tack altogether by signal, and at what hour?—At ten o'clock, or very near it, the Admiral made the general signal for all to tack together, and the chasing ships complied with that signal as soon after as possible.

Before the signal was made for ships to chase, was the Vice Admiral of the Blue and his division a-head of the Admiral, and something under his lee-bow, or what was his situation?—The Vice-Admiral and his division was a-head of the Commander in Chief, but a little on his lee-bow.

Were not the ships that chased in different situations, some a-head, some a-stern, some to windward, and some to leeward, at the time the signal was made for them to chase?—I only answer for the situation of the Worcester.

When ships chase from different situations, as before supposed, and who differ in their rate of sailing, can they come one and all at the same time in a proper position for tacking?—No.

Was it not the Admiral's practice to make a signal for ships chasing to tack, when he judged they ought to do so?—Certainly.

Did he make any such signal that morning to the chasing?—Not that I observed.

The Admiral admitted he did not.

Were not four of the ships that were sent out to chase, the whole of the Vice of the Blue, that was stationed in the line of battle between the
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the Vice-Admiral and the Admiral's of your division?—I have not yet named any ships that chaced.

Were not the Elizabeth, the Defiance, the Robuste, and the Worcester, the ships?—Yes, they were.

Did not that leave a wide space between the Formidable and the Admiral's own division?—It certainly extended the distance to what it was before.

As you was in chace at that time, could you see the distance the Vice-Admiral was from the Admiral at that time?—It was impossible to ascertain.

If those four ships had been permitted to take their station instead of chacing, would not the two divisions (the centre and Vice of the Blue) of the fleet being more connected than they were after those ships were sent a chacing and separated?—Undoubtedly.

Sir Hugh Palliser. Do you think that ships proceeding along an enemy's line singly, are exposed to more or less damage, than if the fleet was connected and proceeded together?—Undoubtedly to more, supposing the enemy's line to be compact, which in this case it was not.

Did not the chacing ships, so far as you know, come into action separately?—The four ships that chaced came in separately, and some a considerable distance from each other.

Were any ships near to you so as to be of support to each other?—I do not know what time you allude to. I was two hours in action, and was nearer at one time than others.

Did part of the chacing ships go a-head, and join the wake division?—I really do not know.

If the six ships had not been taken from the Vice of the Blue and sent to chace, might not the Vice of the Blue, with his whole division, have gone into action in a connected body, and have supported each other?—Yes, I should think so.

Captain Duncan. Do you think, if the Admiral had made the signal for forming a regular line, and chacing in that regular line, he could have brought the French to action that day?—No, by no means.

Sir Hugh Palliser. Was it the van division, or the ships in the rear division, that began the engagement?—About eleven, or thereabouts, in the morning, I observed the van division in engagement with the enemy.

You say at different times you was in different situations. I would ask if, at any time of the action, whether those four chacing ships were so situated, as to be of support to each other?—No ships that I could see, could veer near enough to support each other, I think.

Were there not six ships in all that chaced?—Four, I said, before I was sure of, I believe there were two more, but I am not certain of them.

Do you think the damages you received in the engagement were probably greater than they would have been, if you had engaged in a body with the rest of your division?—That depends greatly on circumstances, the number of ships I engaged, and the enemy's situation.

Captain Duncan. Were the enemy lying close?—No, far from it; they were much scattered.

How far do you think the British fleet were from van to rear at the beginning of the engagement?—It is difficult to ascertain distances at sea; but it appeared to me, that the distance from van to rear of those in battle might be full three leagues.

Captain Boteler. You say the French fleet was much scattered. Were they much extended?—I was too busy to observe.

In what part of the French fleet did you begin to engage?—I received two fires from the French van, about ten minutes past twelve.

What ship did you first begin with?—I thought it was the third ship, she being close to me.

Did any of them a-head of you bear down, with intention, as it appeared to you, to cut you off?—Several of them did bear down, but I concluded it to be with an intention to engage me close, which they did.

Did any of them bear upon your stern to rake you as they passed?—Several did bear down, as I have observed before, but one particularly bore down before the wind, came, I believe, within pistol shot, under her top-sails, then star-boarded her helm, let fall her fore-sail, stood under the Worcester's stern, and raked her fore and aft.

Were any of our ships near you at that time?—I know the Formidable could not be a mile from me.

Did you observe the Formidable when she went into action?—At intervals, when the fire and smoke was clear from me, I could see her, but do not know when she first went into action.

In the course of the engagement, what ships were a-stern of the Formidable?—Four sail were a-stern of her.

What were their distances with respect to each other, were they close or wide from each other?—I was so much engaged, that I could not possibly observe that.

Did you observe the Formidable, with her mizen-top-sail a-back, to make these ships close, turning all the time she was engaged, or any part of it?—I did not see the mizen-top-sail of the Formidable a-back, but I observed that the Worcester did not make with her.

What time did you pass the sternmost ship of the enemy?—About five minutes after two in the afternoon.

When the Admiral, with the van and centre divisions, and the ships with them, had passed the rear of the enemy, did they immediately wear and tack, and double upon the enemy to renew the attack?—I neither saw them tack or wear, but I saw Sir Robert Harland's

Harland's division stand to the southward, double, and stand to the enemy.

President. Do you judge the action would have been brought on that day, if the Admiral had waited to make his line closer, and more compact?—No, I do not think it would; for in the morning the French were using every endeavour to avoid coming to action, as they had done every day from the 23d. Afterwards they bore down indeed.

Sir Hugh Palliser. Did the Admiral, Sir, with the ships that had passed the rear of the French line, keep so near to the enemy, as to be in immediate readiness to renew the engagement when the Vice of the Blue came out of it, or to countenance and support him while he remained in it?—I did not see the Commander in Chief immediately, for they had done engaging a considerable time before me. I observed when the Worcester came out of action, that the signal for battle was hauled down, and the Vice-Admiral Sir Robert Harland, with part of his division, were to windward, had shortened sail and brought to, with the main-top-sail to the mast; but I cannot be positive.

At the time the French ship raked you, what tack was she upon?—I observed, before she bore down before the wind, she gave me a broadside, put her helm a starboard, laid her head to the northward, and then edged away a little, and raked me fore and aft.

At the time you first discovered the Admiral when you came out of action, and that the signal for battle was hauled down, how far was the Victory then from the Worcester?—I cannot be clear as to the distance; so soon as we came out of action we brought to.

If the Admiral, with the body of the fleet, had wore at the same distance the Formidable did, might not the enemy have been immediately re-attacked with his division and Sir Robert Harland's?—If Sir Robert Harland, who was to windward, had had his ships in order, he might have done it best. I do not think the Admiral with his division could have renewed the action.

If the Admiral had wore as the Formidable did, and the Red division being situated as they were, might not the enemy have been re-attacked?—When the Formidable wore, I think she was in a line with the French fleet, or a part of them; consequently if the Commander in Chief had been in the same situation, and fit for action, they might have been so re-attacked.

From the very brisk fire that was kept up by our ships that day, have you any reason to suppose that the French-ships were not damaged in proportion to the English?—I imagine they were; one ship in particular I saw put away before the wind, and a frigate to attend her.

Admiral Montague. As you passed from the van of the French to the rear when you came out of action, did it appear to you they had suffered so much in their masts, yards, rigging, and sails, as the English had?—As I could not at that time form any judgment of the whole of the British fleet, I cannot make a comparison in general, but

But I observed that the French fleet had sustained much damage, as most of them had been in action before they passed me.

Except the ship that bore away with her main-yard gone, and the frigate to attend her, did you observe any other French ship that had lost her mast or yard?—No.

Sir Hugh Palliser. Was there any appearance of any other ship, either English or French, being totally disabled by the loss of their masts or yards?—I declare I cannot recollect either one or other with jury-masts.

When the *Formidable* wore with her head to the enemy, did you do so?—I did.

Whilst the *Formidable* and your ship were lying with their heads towards the enemy, did you observe any of the French ships make sail towards them?—Yes, several.

Was that the reason of your wearing again, and standing towards the body of the fleet?—It was.

Did the *Formidable* do the same about the same time?—There was but very little time between the *Formidable* and *Worcester's* wearing to stand to the southward.

After you had wore and stood towards the Admiral, did he appear to be alone, or the body of the fleet about him?—There were several ships that passed me before the Admiral came up; I think so; I brought to directly to repair my rigging.

President. Was the *Worcester* in a condition to renew the action after she wore?—By no means.

Court. Please to relate the chief of your ship's damage.—My main-top-mast more than two-thirds through, about six feet above the cap, several shot through and through the fore-mast and bowsprit, one particularly through the bowsprit just within the gun-mooning by a forty-two pounder, the mizen-yard in many places, a great many shot through her sides and stern frames, most of my standing and running-rigging damaged. All my sails damaged, particularly the main-top-sail, stays and back stays damaged; in short, the whole standing and running-rigging, tack and sheet brace and bowline. The fore-mast, when opened, will be found to have several shot which we dared not extract.

Admiral Montague. Then, Sir, in the condition you have represented the *Worcester* to be in after action, supposing the Admiral had wore, could you have been in a proper condition to support him, supposing he had thought proper to renew the engagement?—Not immediately by any means.

How long first?—We were upwards of three hours and a half before she edged down, in a station of line of battle, consequently could not have been ready before.

Sir Hugh Palliser. Did you observe the Admiral wear a second time, and stand to the southward?—I cannot be certain to time, but about four o'clock the Admiral was standing towards the enemy, for the signal for the line a-head.

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Did you observe the Formidable and Victory meet?—I did not.

When the Formidable and Worcester wore a second time, and laid their heads to the Victory, did you observe the French ships you mentioned make sail towards them, then edge away, and endeavour to form a new line of battle, being somewhat to leeward of the British fleet?—I saw them edge away, and thought they intended to form a new line to leeward.

When the Worcester wore, what position was the body of the French fleet in?—As near as I can guess, it was a-stern of the Worcester, and to leeward withal, formed into a line of battle, with their heads to the southward, and their starboard tacks on board.

Whether, in case your ship had come along-side of a French ship, (defective as you have described her) that might be supposed to have received as much damage as yourself, was the loss of your men so great, and a number of your guns so disabled, that you could not have engaged her?—I should have been complaisant enough to have engaged her, if she had been complaisant enough to lay along-side me, as long as I had a barrel of gunpowder. I had no guns dismounted.

Was you that afternoon in the Admiral's wake, or nearly so?—I was a-stern of the Admiral, and to leeward, and got into my station in the line about six o'clock.

What situation was you in on the morning of the 28th, with respect to the Victory at day-light?—I was pretty well in my station in the vice Admiral of the Blue's division; the Victory was a-head, and to windward withal.

Did you see any of the French ships that morning?—I saw three large ships, which I took to be French, on the lee-beam, or rather abaft it; one of them, about a mile and a half from the Worcester; the others were about three or four miles, according to the best of my judgment.

Were they apparently to you nearer to any other part of the British fleet than they were to the Worcester?—I believe there were two ships a-stern and to leeward of the Worcester, that were nearer to them.

Were those three ships chased?—I did not see them.

Was the rest of the fleet seen that morning?—Not from the Worcester.

Was the signal made for seeing them made by any other ships in the fleet?—I did not observe or see any signals made, but I observed on board the Victory two or three ship's signals, which I apprehended were for ships to chase, but I did not see the chasing flag.

Was you acquainted by your officer, that some signal had been made that the French fleet was seen to the S. E.?—Of none but the three ships I have mentioned; I did not hear or see of the body of the French fleet being seen.

Did those three ships crowd sail from us, and which way did they stand?—In the dawn of the day they had much the same sail set that

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we had, and kept the same course. As soon as it came to be clear day, and they found us to be the British fleet, they bore away, with all the sail they could crowd, to the S. E.

If the British fleet had chased those three ships, and suppose the French fleet to be in the direction they steered, was there not a probability of our undamaged ships coming up with their disabled ships, and in that case might not we have taken them; or if the rest of the French fleet staid to support them, might not another engagement have been brought on?—Some of our undamaged ships might possibly have chased the three ships, but as I did not see the body of the fleet, I can be no judge of their situation, nor what they would have done; it depended wholly on the distance we were then from Ushant or Brest, the part the three ships seemed to steer for.

Admiral Montague. You say the body of the French fleet was not seen from the head of the Worcester; then if Admiral Keppel had ordered the undamaged ships to chase those three ships, might they not have been led into the mouth of the enemy, before the disabled part of our fleet could have come to their support?—It depended wholly on the distance the body of the French fleet was from the chasing ships, and I know not whether our ships sailed better than their's.

Admiral Buckle. When did you last lose sight of the French fleet in the night of the 27th?—I saw them about eight o'clock at night, about two miles to leeward of the British fleet, and about ten o'clock the master and four lieutenants that were upon deck, came and informed me, that they saw several rockets fired into the air from the French fleets; afterwards we saw nothing of their lights.

On the 28th in the morning, how was the wind when you discovered the three ships?—About W. N. W. with fresh gales and hazy weather.

Was then the Worcester, at your command, in a condition to go down on an enemy's lee shore, and begin a general engagement?—Not to go on a lee shore by any means whatever, or to chase.

Sir Hugh Palliser. In case the fleet had chased nearly before the wind on the 28th, could not the Worcester have carried all her sails to have company with them?—As the Worcester's main-mast was not injured much, I apprehend before the wind I could carry sail, having got my main-top-mast fished and secured the night before.

What latitude was the Worcester in at noon of the 27th?—Latitude 48. 32. N. Ushant bore east about forty leagues, at noon of the 28th, it was 48. 16. N. Ushant bore that day E. 28 leagues, N. 80 degrees.

In the middle of the summer, as that was, supposing each ace of 30 leagues, was the chance of having moderate and fair weather, or a gale of wind, the most probable?—The wind and weather for that time of the year was rather extraordinary, it having blown fresh, and was thick and heavy for three or four days together before.

Admiral

Admiral Montague. During the course of your service, have you not frequently known heavy and hard gales of wind in summer?—Certainly I have; I have been thirty years at sea.

President. What sort of weather had you for three or four days afterwards?—The next day was rather bad, blew fresh, and the weather was heavy, the others I must refer you to the log-book for; on the 29th it was squally, with rain; 30th fresh gales and moderate; 31st moderate and cloudy, with rain at times.

Sir Hugh Palliser. Being the middle of summer, and short nights, do you imagine we should have been in imminent danger if our fleet had pursued the French fleet until we had seen them into harbour, or made the land off Ushant?—That depends upon the certainty of the distance; had I been single, and in chace of the enemy, I should have stood in until I made the land, or judged myself near it; as to a fleet, it depended entirely upon the situation of it; if it was in a good situation, I should not hesitate a moment about it.

Are you acquainted with that part of the French coast?—Not so well as to run a risque, without I had a master on board who is better.

Is Ushant the bottom of a bay, or the extremity of the coast?—I apprehend it is an island, and at the extremity of that island, detached from the main.

Did the Admiral, on the 28th, lay the fleet with their head to the northward; and before they laid their head to the northward, did you observe any ships make signal to set up their rigging?—If I had, I should likewise.

Admiral Montague. Upon the whole then, Sir, did it appear to you, as an old and experienced officer, that Admiral Keppel, by his conduct on these two days, tarnished the honour of the British flag?—NO, Sir, I have had the honour of knowing him many years. I always looked upon him as an exceeding good officer, inwardly a good man; and I believe him so still, having no reason to think to the contrary.

TWELFTH DAY, WEDNESDAY, *January 20.*

AT ten o'clock the Court was resumed, when Captain Robinson, of the Worcester, was again called, to be cross-examined by Admiral Keppel.

Admiral Keppel. When you first saw the French fleet on the 23d, what force do you think it consisted of?—I really cannot tell their force, but I counted forty-four sail, large and small.

How was the Vice-Admiral of the Red situated, with respect to the Admiral of the fleet?—I cannot say; I recollect he was considerably to leeward.

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How was the Vice-Admiral of the Red situated, with respect to the Admiral of the fleet?—I cannot say; I recollect he was considerably to leeward.

Do you think that any time on the 23d the French fleet could discover what the British fleet consisted of?—I really do not know.

Did the Admiral pursue the French fleet in the afternoon of the 23d, in a line of battle, carrying a deal of sail?—He did.

In the morning of the 27th, how far was the Vice-Admiral of the Blue, and his division, to leeward of the Victory, when the signal was made to chase to windward?—I was not on the deck before the signal was made, but when I did see her, the Victory could not be less than two miles a-stern, and to windward withal.

Under what sail was the Vice of the Blue and his division, when the signal was made to chase to windward?—I cannot answer for the rest of the division, but the Worcester was under close-reefed top-sail, fore-sail, main-top-mast, stay-sail, and fore-top-mast stay-sail.

Do you understand, Sir, when a signal is made to chase to windward, that it obliges you to stand on one tack, till the Admiral makes a signal for a general tack?—I always understood, when a signal was made to chase to windward, that the ship so ordered was to stand on that tack, till he could plainly see that the Admiral's signal called him in, or to tack when the Admiral thought proper.

Could you not have tacked upon that signal, without the Admiral's making the signal for you to tack?—I undoubtedly could have tacked.

Are there not quarter signals for ships to chase upon, when the Admiral would have them to chase upon a quarter, between any two points, as between the N. and W.?—Certainly there are.

President. When your signal is made to chase, do you, or do you not, think that you are authorised to take advantage of the wind, by tacking without signal?—Yes, Sir, when I have an object in view.

Admiral Montague. When you have not an object in view, do you not think it is your duty to get as much to windward in the wind's eye as you can?—I do.

Admiral Keppel. Would you not have tacked before you did, without waiting for a signal, if you had expected the fleet to close with the enemy so soon?—I certainly should have tacked when I found the object of our chasing was answered, which was that of bringing the French fleet to action.

When you saw the English fleet engaging, did you keep your wind, or could you, by a very rapid sail, have closed in with your division sooner than you did?—I answer, if I had taken any wind, I could have weathered more than half the French fleet, the wind having shifted more than two or three points to the westward, that I was obliged to keep away in order to join my division as soon as I could, but in the mean time the French fleet edged away, and I was afraid they would have cut me off from my division.

Then, Sir, could you imagine it possible for the Admiral to have made a signal that should put you in that situation?—Not intentionally, I am clear.

You

You said yesterday, when you was engaged, the Formidable was a mile from you, and that there were four sail a-stern of the Formidable; what was the name of the nearest of those four ships?—I believe it was the Robuste.

Were there any ships between you and the Formidable at the time you came out of action?—There were not.

Can you inform the Court what became of the four ships that you describe to have been a-stern of the Formidable in the beginning of the action?—Every one of the ships a-head of the Worcester were engaging the enemy, consequently stood on, and I believe went to leeward and a-head of the Formidable, to the best of my knowledge, when the smoke would permit me to take notice of them.

Was the Formidable's mizen-top-sail aback at any time while these ships were passing by her?—I never saw the Formidable's mizen-top-sail aback.

Did those ships pass to leeward and a-head of the Formidable when in action, in consequence of the Admiral's signal in the morning, to chase to windward?—Had the signal not been made to chase to windward, it is possible those ships would have been in a different situation to what they were in at that time.

That does not answer my question; I ask you whether they did not pass to leeward and a-head of the Formidable, in consequence of my signal to chase at five in the morning to windward?—It is not possible for me to know their reasons, for they engaged the enemy before the Worcester, being a-head of me on that tack.

Do you mean, Sir, that they never were so closed as to give succour to the Vice-Admiral of the Blue, and to one another?—I do not know that ever they were nearer than half a mile of one another, and sometimes more apart when we could see them for smoke.

Does *sometimes* mean the beginning of the action, or what time, since sometimes takes in different periods?—In the course of the action I cannot be particular as to time; it was between five minutes past twelve, and five minutes past two, the time that I was engaged.

Do you mean that in no time between those periods, the ships were not closed together nearer than half a mile, so as to be of support to each other?—I do not recollect that they were.

Do you recollect that they were not?—I do not, I really cannot judge of the whole.

Sir Hugh Palliser. I must insist that the prisoner do not ask the questions so often.

Admiral Keppel. I am always under the controul of the Court; but as I never interrupt the prosecutor in his questions, I must claim the privilege of not being interrupted in my cross-examining Captain Robinson, who has taken a large scope, a period of two hours; that is my reason for asking him.

The witness desired the evidence he had given this day might be read, which was done.

Admiral Keppel. You have said that three ships passed a-head of the Formidable during the action. How do you reconcile that with their never being nearer than half a mile?—I did not say they passed a-head of the Formidable; they passed a-head of the Worcester from the situation they were in a-stern.

The Court begged that the minutes might be read, where he had said that there were four ships a-stern of the Formidable in the course of the engagement, and which, in another place, he had said had passed a-head and to leeward of the Formidable. These facts were read by the Judge-Advocate from the minutes, and clearly demonstrated that the Captain had either mistaken the matter the first or second time. Admiral Keppel, with his usual openness, begged the witness to recollect himself; to think before he spoke, and be careful of his meaning. He did not wish, in the smallest degree, to mislead him, or to hem in and tie him to a meaning, if he wished to pass from it.

Admiral Keppel. If they were a-stern of the Formidable when in action, and got out of action before her, must they not have passed her during the action?—I do not know.

You have stated your ship to be very much exposed while in action, which you begun with the third ship of the enemy's van, and carried on along the line. I should be glad to know how many men you had killed and wounded?—I had but three men killed and five wounded, but some of the men, I believe, died of their wounds a few days after.

Was the Victory standing to the enemy on the larboard tack when you first saw her after you came out of action?—She was.

Can you inform the Court the precise time when you wore and stood towards the enemy, when you came out of action?—I cannot fix the precise time.

Can you say any time near it?—I believe it was near a half after two, but cannot be positive.

How long did you stand on the larboard tack, when you did wear, and when you wore standing back again to the Admiral, was it by signal?—The moment I wore I brought to. I did not make sail. I was not in a condition to make sail; and when I was to stand back, it was not by signal. I did not see the Admiral.

After you wore back to the Admiral, how near did the Admiral pass to the Worcester?—I really do not recollect how near, but it was not far distant.

Was the Admiral then upon the larboard tack?—I believe he was.

Did you see the signal at that time flying on board the Admiral for the line of battle a-head?—No, not at that time, but I did at four o'clock.

Had you no officer appointed to observe the Admiral's signals?—I had, but he was wounded early in the action.

When

When the *Formidable* passed you, do you recollect where the *Formidable* was?—To the best of my knowledge she was to windward.

Do you say positively, that when you wore the second time after the action, to stand toward the Admiral, several ships passed you a-head of the *Victory* on the larboard tack?

Sir Hugh Palliser begged the witness might be permitted to refer to his former words, whenever he should find it necessary to do so.

Admiral Keppel. Mr. President, though it is not the practice for witnesses on their examination to have reference to what they said before, I agree to it cheerfully. I have no design to perplex or mislead any witness. I wish only for the discovery of truth, and I hope that candour and plainness will lead me to it.

Court. When you want your memory refreshed the minutes shall be read.

I am positive that some ships passed, what they were I do not know; and that one of the ships, to the best of my remembrance, hailed the *Worcester*, and told us to get out of the way, for the Admiral was coming up.

Was that ship and the *Worcester* at that time to the southward?—I do not recollect.

I ask you this question, because the southward is a-stern of the *Victory*. Now you know of one ship, was that a-head or a-stern of the *Victory*?—I really do not know.

Do you know of any other ship?—I was so much engaged in putting my ship to rights that I could not see.

What time did you see the French fleet forming the line on the starboard tack, standing to the British fleet on the 27th, after the action?—I observed some of the French ships standing to the southward between two and three o'clock, I cannot tell the exact time.

Was it before you stood towards the English Admiral?—Yes.

When you say you got into your own station and the Admiral's wake at six o'clock in the evening, do you mean that you was then got into the wake of the Vice Admiral of the Blue, or of the Commander in Chief?—I mean, that I was in my station in the Vice of the Blue's division; and as near as I could get between the *Vengeance* and the *Elizabeth*; but the Vice-Admiral of the Blue was to windward, and the Commander in Chief a-head, and to windward withal.

When the Admiral laid his head to the northward on the 28th, did the bring to on the larboard tack?—I believe, in the morning of the 28th, the Admiral made the signal to wear, laid their heads to the northward, and brought to; I think so, to the best of my recollection.

Did he not stand before the wind at all after wearing?—I do not recollect, certainly. I believe he did make the signal for the line some time.

After the fleet was laid to on the larboard tack, was your ship one of those that made a signal to set up rigging?—I did not make that signal at all.

As

As you say you are certain that several ships passed you on the larboard tack, after the action, and gave, as a reason for that certainty, that one ship hailed you to get out of the way, for the Admiral was coming up?—what do you mean by saying you do not recollect whether that ship was a-head or a-stern of the Admiral?—Upon recollection, I think he must have been a-head of the Admiral on the larboard tack.

Do you recollect whether that ship that hailed you was on the larboard or starboard tack?—I have said before I cannot recollect.

Do you recollect whether it was a two-decked or three-decked ship?—I do not.

Admiral Montague. Do you recollect what answer you gave the ship that hailed you?—Perfectly well. It was, that they must see my situation, and that it was out of my power to get out of their way; but I would do the best I could.

When you was hailed, did you not naturally look to see where the Admiral was?—I did not see the Admiral, but they told me he was a-stern coming up.

President. What happened in consequence of that answer? Did the Admiral pass you to leeward or to windward, or did the ship that hailed you bring to?—To the best of my remembrance the ship passed on a-head, but I know not on what quarter.

Did the Admiral pass you?—I was so much engaged that I do not recollect.

He was then ordered to withdraw.

Mr. SEWELL, Master of the *Worcester*, was then called in and sworn. Before Sir Hugh Palliser began to question him, the charge was read to him, as he had not been present at the first reading.

Sir Hugh Palliser. Do you remember seeing three ships of the enemy in the morning of the 28th, at day-light?—Yes.

What distance do you reckon they were from the British fleet?—The sternmost ship of the three was from the *Worcester* a mile and a half, as near as I could judge.

Was she nearer to any other part of the British fleet than to the *Worcester*?—There was a ship a-stern of the *Worcester*, rather a little on the larboard quarter, that did appear to be something nearer than the *Worcester* was.

Do you remember, when the *Worcester* came out of action, at what distance the Admiral and body of the fleet were from the rear of the enemy?—As near as I can guess, they were to the southward of the *Worcester* about two miles; their heads towards the enemy, with their larboard tacks on board.

Did you take notice of the Vice-Admiral of the Red and his division at that time?—I saw the Vice of the Red, and some ships with him, to windward of the Admiral, and a-head withal.

Were they also on the larboard tack?—They were.

Cross-

Cross-Examination by Admiral Keppel.

You have said, that in the morning of the 28th, there was another ship on the lee-quarter of the Worcester, and that the nearest of the three ships were within a mile and a half, did that ship or the Worcester lay their heads towards her, and make a signal to the Admiral that she was so very near, and was an enemy?—The Worcester did not, and I cannot say as to the other ship.

At what time did the Worcester come out of action on the 27th?—About two o'clock.

President. Had a signal been thrown out for your ship to chase at the time you are speaking of, in the morning of the 28th, was you in a condition to chase?—No.

Admiral Keppel. Did you see the Victory when you came out of action?—I did not.

How soon then did you see her afterwards?—About three o'clock.

Was she then upon the larboard tack?—She was bearing down, and had the signal flying for a line of battle.

Did you observe, at that time, any ships formed in a line of battle, a-head or a-stern of her?—No. There were a great number of ships round her.

Do you mean a-head of the Victory?—Some a-head, and some on each side of her.

Can you name any of them?—No.

Do you mean the Vice-Admiral and his ships among the number?—They were to windward of him, but I cannot recollect whether any of those ships bore down with them.

Then you cannot name any one individual ship?—No.

Though you observed those ships around the Admiral, and cannot mention one of their names, had they their starboard or larboard tacks on board, can you tell?—They were going down before the wind, with the line of battle flying.

Are you quite exact as to your time?—It was between three and four in the afternoon.

Did the Worcester wear and lay her head towards the enemy after she came out of the action?—She did.

How long did she continue on that tack before she wore again?—About half an hour.

How near did she pass the Victory, standing on the larboard tack, after wearing again, and standing to the southward?—About a mile.

Can you recollect what time it was?—I cannot justly say, it was something after three o'clock.

Do you recollect any ship hailing you after passing the Victory?—I recollect there was a ship that hailed us, and desired us to endeavour

to make more sail and get out of the way of her, as the Admiral was then a-stern of him, and other ships on each side of him.

Was that ship then on the starboard or larboard tack?—Neither. She was coming down right before the wind.

Do you recollect that ship's name, or whether she had two or three decks?—I don't know her name; she had three decks.

Am I to understand the ship that hailed you was going before the wind, or in a state of wearing?—She was going before the wind in a state of wearing, to haul up with her starboard tacks from the line.

Court. When you came out of action, what distance was you from the *Formidable*?—About a quarter of a mile.

Capt. Duncan. Did you, in the morning of the 28th, set up rigging?—Yes, we did.

Ordered to withdraw.

CLARK DUNN, Second Lieutenant of the *Worcester*, called in and sworn.

Sir Hugh Palliser desired he might be asked the same questions that he had put to Mr. Sewell, which was done, and answered agreeable to Mr. Sewell's evidence.

Sir Hugh Palliser was going on to ask the same questions as Admiral Keppel had on his cross-examination, but Admiral Keppel stopped him.

Sir Hugh Palliser. When you saw the Vice-Admiral of the Red on your weather beam, can you remember whether they were under sail, or laying to?—Laying to.

Admiral Keppel desired the same questions he had asked Mr. Sewell might be asked the witness.

Admiral Montague. Before you proceed, where was you stationed during the action?—On the lower deck.

Questions were then put, and answers given to them exactly the same as had been done by Mr. Sewell. Ordered to withdraw.

First Lieutenant of the Worcester called.

Judge Advocate. He is so ill, that he cannot attend the Court to-day.

Sir Hugh Palliser. I beg the Judge-Advocate may read Admiral Keppel's letter to the Lords of the Admiralty, on the 30th of July.

Admiral Keppel. I have no objection.

[Here Admiral Keppel's letter, as inserted in the London Gazette of July 30, was read.]

Admiral Keppel. I admit the letter to be mine.

Sir Hugh Palliser. I beg the Admiral's journal of the 27th and 28th may be read.

[Here

[Here the journal was read by the Judge Advocate, and stated the different winds, weather, and positions of the two fleets on those two days, signed by the Admiral; it likewise mentioned the Admirals seeing the three ship's on the morning of the 28th, and of ordering some of the fleet to chase, but on finding them crippled in their masts and yards, and not able to sail as they should do, he ordered them to leave off chasing. When the journal was finished reading, the Admiral acknowledged it to be his.]

Admiral Montague. I move that all the papers that have been read, do lay upon the table for our inspection and perusal.—Agreed to.

CAPT. BAZELY, of the *Formidable*, Sir Hugh Palliser's own ship, was then called.

Sir Hugh Palliser. Did you see the French fleet on the morning of the 27th?—Yes.

Did you see them at any time in line of battle?—Yes.

How was the Vice of the Blue situated as to the Admiral, whether a-head on the lee-bow, or how?—On the lee-bow, and a-head withal.

Do you remember the signal for six ships of the Blue division to chase?—To the best of my recollection there was.

Did that disperse those ships from their Admiral, and from each other also?—It caused them to be extended from their Admiral, but whether separated from each other I cannot say.

In the morning when the Vice of the Blue, and his division, was situated as you describe, were they not properly stationed to take their places in a line of battle if the signal had been made?—They appeared so to me, if the signal had been made to form on the larboard tack.

If all the ships of that division had been suffered to remain with the Admiral, might they not have gone into action with him so as to have supported each other?—Yes.

[The public will see that these questions have been asked before, and the whole tendency defeated by this plain but stubborn fact, that by lying to for the Rear division, which was far to leeward, and forming on the larboard tack the line of battle, the enemy would have got away, which was evidently their intention.]

Did the chasing ships come into action separately?—They appeared so to me, those that were a-stern.

Did part of them, by chasing go a-head of the *Formidable*, and join the centre division?—Yes, two.

Did that leave the Vice of the Blue equally supported as the other flag officers?—No.

Were any of the ships of the Vice of the Blue's division within gun-shot of the *Formidable* when she began the action, except the *Ocean*, then to leeward of her?—The nearest ship a-stern was half a mile from her.

During the action were not four of our ships at a distance a-stern separated?—It appeared so before the action began, after I cannot tell.

During the time the Formidable was engaged, and passing along the French line, were any ships so near to her as to have supported each other, except at one time, when the smoke was so thick that to avoid being on board her she was obliged to go to leeward?—After the Formidable opened her fire, I observed no other.

What ship was that supposed to be?—I cannot speak to that.

In what part of the French line did the Formidable begin the close action?—One ship a-head of the French Admiral, in the centre.

Did she receive the fire of several ships in the van, before she began to fire in close action?—Yes.

Do you think the damages the Formidable received were not much greater than they would probably have been if she had fought in a body with the rest of the Blue division?—Most undoubtedly.

As you passed along the French line, did they appear more irregular than might reasonably be expected, after having been engaged with our van and centre divisions?—No.

The four ships you spoke of a-stern being at a distance, did not the Formidable back her mizen-top sails, and proceed slowly for those ships to close?—The mizen-top sail was backed, to prevent her shooting a-head, to avoid the Ocean's fire, and also for those ships to close.

At what distance were the ships of the enemy when she (the Formidable) first began to engage?—Within musket shot.

Did she pass every ship of the enemy's line at the same distance?—Nearer some, and farther from others.

Was not the Admiral supported with his own division whole, and that part of the Vice of the Blue's which you have said joined him?—He was by those two, but what others I cannot say.

In passing along the enemy's line, did it, or did it not appear to you that several of them were much damaged, not keeping up so brisk a firing as at first?—I did not observe any particular damage they had received, but that the centre Admiral and two other ships returned us very little fire.

Did you observe one disabled and run out of the line, with a frigate, after we had passed?—One with her main-yard down quitted the line.

How long a space do you reckon the Formidable was engaged with the enemy?—I cannot say exactly, I think an hour and forty minutes.

When the Admiral, with the van and centre divisions had passed the rear of the enemy, did he then wear again, double, and continue the engagement?—It is impossible for me to say when the Admiral did wear.

When

When the Formidable came the length of the rear of the enemy, was the Admiral so near with the rest of the ships under his command as immediately to renew the engagement, or succour the Vice-Admiral of the Blue in case that the enemy had borne down to cut him off?—No.

When the Formidable ceased firing, do you remember you and myself taking notice that the Admiral, with the body of the fleet then with him, were standing towards us, and I therefore ordered the ship directly to be wore?—I recollect, after the Formidable had passed the enemy's rear, the Vice of the Blue directed the ship to be wore, I then observed the Victory and some other ships standing towards the enemy.

At what distance were they from the Formidable?—Two miles.

When the Formidable wore, were we then in the stream of the enemy's line, or in the wake of the sternmost ship?—In the wake of the sternmost ship.

At what distance?—Random shot.

Was that the time you speak of, when you say the Victory was two miles from the Formidable?—At the time she was wearing.

Whilst the Formidable was wearing, did not the sternmost ship of the enemy fire her stern chase at her?—I recollect while she was passing, that some two or three shot were fired at her, and passed close to her.

While the Formidable lay with her head towards the enemy, were not the officers and men ordered to return to their quarters, in expectation of renewing the attack, when the Admiral should come up with the fleet?—Yes, directly after the ship was wore.

After laying that way a little while, did you observe three of the enemy's ships making sail towards her?—Yes.

At this time, was the Formidable nearer those ships than the Victory to her?—The Formidable was nearer the Victory than the enemy's three ships.

When the Formidable wore again, did those three ships edge away and begin to form a line, pointing to leeward a-head of the British fleet?—They did.

Did you see the Vice of the Red, and where, when the Formidable lay with her head towards the enemy?—They were to windward.

If the Victory and the other ships with her, had wore as near the rear of the enemy as the Formidable did, after coming out of action, might the Vice of the Red, having doubled on the enemy, have borne down also, and prevented the French forming a new line, which they were then beginning to do with their heads towards us?—If the Vice-Admiral of the Red had bore down so, I saw nothing to the contrary.

If the Admiral, with the rest of his division, had advanced, would it not have obstructed the enemy's line?—It certainly would have very much obstructed the forming of the French line.

Do you know the state of the Admiral's ships that were with him?—No.

Do you know the state of the Vice of the Red's division?—I know the state of no ship but my own.

What was the state of the Formidable when she came out of action?—I beg to refer to the minutes; all my sails that were set were cut to-pieces; and, in short, she was very much damaged.

Was she capable of going into action again immediately?—To go into action she was, but not to pursue an enemy.

Might not the action have been immediately brought on, when the Vice of the Blue was coming out of the line, and the enemy prevented forming a new line?—I saw nothing to the contrary.

Admiral Montague. If the Admiral's division had wore as soon as the Formidable did, would it not have caused the ships of the two divisions to run on board one another; one being upon one tack, the other upon another?—I think not. I suppose if the Admiral with the ships with him had continued to advance towards the enemy, with a signal for battle flying, it would have prevented them forming it so soon.

Sir Hugh Palliser. Take notice the Prisoner smiles.

Admiral Keppel. Does the Court preclude me that? It is my natural countenance.

Admiral Arbuthnot. Can you venture to speak of the state of the Admiral or Vice-Admiral of the Red's ships, or divisions at that time?—No, of no ship but my own.

THIRTEENTH DAY, THURSDAY, Jan. 21.

AT ten o'clock the court was resumed, when Capt. BAZELY was again called to the bar.

Sir Hugh Palliser. If the Admiral, at that time, did not think fit to re-attack except in a line of battle, might he not have immediately formed one by making a signal for the Vice of the Red and his division, who was then to windward to take the lead on that tack in place of the Vice of the Blue, who was then just come out of action?—I saw nothing to the contrary.

Did the enemy shew any design of renewing the attack?—Not till after they began to form a line to leeward.

Did the British fleet seem to avoid to renew the action?—Yes.

After the Formidable wore a second time, did she and the Victory meet?—They passed each other.

When they passed each other, did the Victory stand on, or wear under the stern of the Formidable?—She wore a-stern of the Formidable.

Did

Did she first run to leeward, and then wear?—She appeared to me to go from the wind.

Did this leave the Formidable a-stern, and to windward withal of her wake?—Yes.

When the Victory did wear, and a little to leeward, as you describe, did she not then haul her wind to the southward?—It appeared so to me.

Were not the French fleet then a-stern?—Yes.

Did not the Victory continue to stand so the rest of the afternoon?—Yes, and till day-light the next morning.

Do you recollect what sail the Victory carried during the afternoon?—I do not recollect that.

Did not the Victory always outfail the Formidable with the same sail?—Yes.

After the Victory was standing to the southward, did the French stand the same way, pointing somewhat to leeward of our fleet?—Yes.

Did the Vice of the Red bear down into the Admiral's wake that afternoon?—Yes.

Was that his own, or the Vice of the Blue's station on that tack?—On the starboard tack it was the Vice of the Blue's station.

Was that done in consequence of the signals flying for the line of battle, or by particular order?—I do not know.

Did you see him afterwards make sail a-head of the Admiral to get into his own station?—Yes.

From the various motions of the Admiral during that afternoon, did you think that he had no intention to renew the engagement 'till next morning?—It appeared so to me at the time, and I expressed so to the Vice-Admiral at the time.

President. What was the time?—At the time the signal for battle was hauled down, and in the middle of the afternoon, when the Admiral pointed to the southward. I was in too much confusion to tell the time exact; it was when the Admiral sent for me from the fore-castle aft.

Admiral Keppel entreated the Court to protect him against those omissions which at times appeared in the minutes. The words of the witness "I was in too much confusion at the time," were either neglected in the taking down, or in the reading it afterwards. The Judge Advocate said, in his excuse, that the little order observed in the Court was the cause of any omission that might occur.

President. Did you hear the Fox frigate deliver a message to the Vice-Admiral of the Blue?—No, I did not.

Did you not see the Fox come under the Vice-Admiral's stern?—I did not see her till she cheered the Formidable.

Were you not informed what brought the Fox there?—No, not until after dark.

Sir Hugh Palliser. How far do you think the *Formidable* might be from the *Victory*, within half an hour after the *Victory* passed to leeward of her?—Not more than half a mile.

After the Admiral stood to the southward, did the *Formidable* haul out of the way of other ships, to let them take their stations between her and the *Victory*?—Yes.

What was the *Formidable*'s station in the line of battle?—The ninth ship from the *Victory*.

After the *Formidable* got out of the way, did she not stand after the Admiral with all the sail she could set, and trimmed as well as her condition would admit?—Yes.

Did not the *Victory*, notwithstanding, increase her distance all the afternoon?—Yes.

Did not the *Formidable* steer after the Admiral the whole afternoon, keeping him a little open under her lee-bow?—Yes.

Was not that a proper course for getting into her station?—Yes.

So soon as the Admiral wore and stood to the southward, were not the officers, and all the hands on board the *Formidable*, set to work to knot and splice the rigging, and repair other damages?—Yes.

Do you recollect the distribution of the officers for that purpose?—Yes.

Do you remember the *Fox* coming to the *Formidable*?—I have already answered that question.

At what distance do you think the *Victory* was from the *Formidable*?—One mile from the *Victory*'s wake, and three miles a-stern withal.

About what time was that?—Near sun-set.

Was you in a situation to hear the message delivered from the Captain of the *Fox*?—No.

Was not the signal for the line of battle a-head kept flying on board the *Formidable* till dark night?—Yes.

Was the signal for ships to windward to bear down, with many ships pennants of my division, let fly on board the *Formidable* before or after the *Fox* spoke to her?—Before the *Fox* cheered the *Formidable*, I did not hear the *Fox* speak.

Were not those signals made in repetitions of their being out on board the *Victory*?—Yes.

Had not two of these signals been hauled down in consequence of the ships having answered them, before the *Fox* came down?—I do not recollect that circumstance.

Did not the *Formidable* people cheer the *Fox* first?—The *Fox* first cheered the *Formidable*, and the expression I made to the people on the fore-castle, was, "That's hearty, my lads, return the cheer."

I desire you to give the Court some account of the damages of the *Formidable* in her masts, sails, and rigging.—The fore-mast very much

much wounded and hurt, the top-mast wounded, and the fore-yard and the bowsprit; the gib and fore-top-pennant stay-fail cut to pieces, and went overboard; the fore-fail very much damaged; the fore-stay and spring-stay shot away; all the bracings on the starboard side, save one, shot away, and only three left on the larboard; all the fore-top-mast shrouds and back-stays, except on the larboard side, shot; the top-gallant shrouds and stays, all the bracings, bow-lings, and running ropes in and about the top-masts, the fore-tacks and sheets, were shot away.

Admiral Montague. Notwithstanding the account you have given of the damages of the fore-mast, fore-top-mast, and bowsprit, with their fails, &c. did you not wear twice before they were put into repair?—Yes.

That is, twice before the signal was made for you to come into the Admiral's wake?—Yes.

Sir Hugh Palliser. May not any ship, with all her masts standing, while she has any canvas aboard, in moderate weather, wear by putting her helm a-weather, although her masts and rigging may be in such condition that she cannot carry sail upon a wind to keep company with other ships?—Yes; we had that instance in the *Formidable*.

Were not several of those shrouds that were shot cut in two places?—Yes.

Admiral Arbuthnot. You have just mentioned, that you had made one of these yard-tackle falls to brace your yards: I ask you, whether you could not have braced those yards short, to enable you to stand upon a wind?—Yes.

The reason of my question was, that you had said before, a ship could not make way without those ropes.

Relate the other damages.—Main-top-mast very much wounded; main-yard, and main-top-fail-yard much wounded; main spring-stay shot away; seven shrouds in the starboard, and five of the larboard main-top-mast-stay and spring-stay; fore main-top-mast-shrouds, and all the back-stay, middle stay-fail stay, and top-gallant stay-fail stay; fore channel, three chain plates shot away; main channel two, mizen channel one.

President. After you passed the French fleet, did they bring to, or make sail?—They broke up their line, and appeared to be under sail, not lying to.

Were you then in a condition to have followed them to renew the engagement, if the Admiral had thought proper to do so?—She was in a state to renew the action, but not to carry sail after the enemy.

Admiral Montague. You have said, that there was some difference between the defects you suffered, and those you gave an account of the next day to the Admiral. I ask you when you took the account of the defects you have now given in?—Immediately on her arrival at Plymouth.

Sir

Sir Hugh Palliser. Were not the officers and men employed all that afternoon, and the following night, in repairing damages?—Yes.

Did not the *Formidable* get into her station before day-light the next morning?—She got into the line, but I cannot say into her station.

Did not the drums beat to arms at two in the morning?—Yes.

All hands at quarters, and ready in every respect to engage, expecting to do so at day-light?—Yes.

During the afternoon of the 27th, notwithstanding the damages the *Formidable* received, might she not have bore down upon an enemy, having only two guns disabled, although she was not able during the afternoon, to reach her station in the line of battle with the sail the Admiral carried?—Yes. Such was the Vice-Admiral's declaration to me, though I cannot recollect as to time.

In the morning of the 28th, do you remember seeing three French ships to leeward?—I remember seeing three strange sail, which I supposed to be French men of war, and part of the French fleet.

At what distance was the nearest of them to the British fleet?—Not more than a mile from the *Formidable*.

What number of men on board of the *Formidable* were hurt by an explosion of powder?—It was reported to me twenty-seven.

Were any of them killed on the spot?—The officer who commanded that deck where the explosion happened, reported to me that no men were killed by it.

What number of killed and wounded did you report to me after the action?—To the best of my recollection, fourteen men killed, one of whom the boatswain, two since dead of their wounds, and forty-nine wounded.

Have you made a comparison of the number of killed and wounded in the different divisions, from the account published by the Admiral?—Yes.

What was the number of killed in the Admiral and Vice of the Red's division put together?—I do not recollect the number.

Was it more or less than what were killed in the Vice of the Blue's division?—Nearly the same.

And as to the wounded?—Nearly the same.

Were those three strange ships chased by the British fleet?—Not that I observed.

Do you know of any signal being made of seeing more strange ships to leeward?—I do not recollect this circumstance.

If the British fleet had pursued those three ships, and supposing the French fleet to have been in the same direction they steered, was there not a probability of some of our undamaged ships coming up with those three ships, or the disabled ships of the French fleet, and have taken them if the French fleet had abandoned them, or if they had

had staid by them another engagement might have been brought on ?
—That being a matter of opinion, I beg leave to decline an answer.

Do you remember what weather it was that morning ?—Moderate.

President. How many knots could the ships have gone with all their sail ?—That must depend on the class of ships.

In general ?—Between seven and nine knots.

Do you know what time the French fleet went off in the night ?—I do not.

Were any signals made in the French fleet that night ?—I do not know.

What distance was the port of Brest from you on that morning ?—Ushant, at twelve at noon, lay North 81. East lat. 48. 11 ; distance might be by the reckoning of the Formidable 45 leagues ; but afterwards we found we had been 13 leagues nearer.

Sir Hugh Palliser. Being the middle of summer, short nights, and moderate weather, do you apprehend it would have been attended with any imminent danger, if the British fleet had pursued that of France, for the chance of coming up with some of them, at least so far as seeing them into port ?—It appeared to be no imminent danger.

If you, Sir, had had an engagement with a single ship, at that distance from Ushant, and had beaten her to occasion her to run away, don't you think that you ought to have pursued her till you saw her into port, or make the land, all your lower masts being standing ?—With a single ship I should not have hesitated a moment.

Here the prosecutor closed his evidence with the witness.

Admiral Montague. In the course of your evidence you said, that the chasing ships came into action separately, unconnected, and at distances, do you know the cause ?

The witness here requested leave to refer to what he had said the day before upon this point.

Admiral Keppel. Mr. President, I have hitherto indulged witnesses in this liberty ; from this moment I object to it. Advantages have been made of the indulgence, which have *affected me, and I have particular reasons in this evidence for objecting to it.* I must examine him *very closely* ; and as I find that my lenity, in some instances, has been abused, I claim that right which I presume I enjoy to object to it.

The President immediately declared, that it was his opinion the witnesses could only have this liberty from the indulgence of the prisoner, and that therefore it was now withdrawn. But that it might be the unanimous consent of the Court, they withdrew upon the question. On their return, the Judge-Advocate read the resolution of the Court, which was, that no witness shall have recourse to what he may have answered before.

Sir Hugh Palliser intreated the Court to be very tender of Captain Bazely, and not to permit him to be treated with any unusual strict-

ness; since comments had frequently been made upon what a witness said in the course of examination, he saw it was necessary for him to intreat the Court to take Captain Bazely into their protection. On this a question arose, and the Court again retired, to consider the propriety of this request. After having been out a considerable time, they returned, and the Judge-Advocate read the resolution, which was, "that as the words of the prosecutor presumed an insult to the Court, in seeming to infer that they would not take this, and every other witness, into their protection, it was resolved the words could not be inserted in the minutes of the trial."

Admiral Montague's question was then repeated.—It appeared to me to be owing to their having chased by signal in the morning.

Admiral Montague. The last part of the question is not answered. Could they not have got into their stations in the line after they had left off chasing?—I cannot tell.

Did the two ships which you say went a-head, and joined the center division, do so by signal from the Commander in Chief?—Not that I know of.

Did the Vice of the Blue make signals for them to come into their station when he saw them go a-head and join the center?—No.

Then if he had made those signals, and they had obeyed it, do you not think that his division would have been better supported?—I do.

You have said the nearest ship you can recollect in the Vice of the Blue's division to leeward of the Formidable, nearing the Ocean, and the four ships a-stern of the Formidable, before the action began, were at a distance from each other, and half a mile asunder, and that the damage the Formidable received was greater than if she had fought with the body of the Vice of the Blue's division; do you not think that if he had made the signal for the four ships a-stern to close the line, and come nearer to each other, and likewise nearer to him, agreeable to the 7th article of Admiral Keppel's fighting instructions, they would have supported him, and taken off a great deal of the fire from the enemy?—In the first place I do not recollect what the 7th article is.

Admiral Montague. It is a pennant at the cross-jack yard-arm, if a-stern; if a-head, at the gib-boom end.—It appeared to me, that if the signal had been made for the ships a-stern to close the Vice-Admiral, they could not have done it more expeditiously than they did.

I mean after they came into action?—After the Formidable had begun the action, I answer for no ships except one, that which passed under our lee when we were going down the French line.

Was the van of the Vice-Admiral of the Blue's division a-head of him to support him during the action?—I don't apprehend the question with respect to the van, as the fleet were not in a line.

Were any of the Vice of the Blue's division, that ought to be a-head, a-head of him?—I can only answer for two ships that passed the Formidable before the action.

What

What ship did you follow in the action?—I cannot recollect.

How far was the nearest ship a-head of you just before you came into action?—A good half mile.

Do you know whether she was one of your division?—I do not.

Did you see, on the 27th, any act in Admiral Keppel that indicated a flight from the enemy; or did you see the French fleet pursue the British and offer it battle?—The British fleet stood on the starboard tack forming their line, the enemy on the same tack forming their line; whether that has the appearance of a flight I beg to submit to the better opinion of the Court.

Admiral Keppel is charged with negligently performing his duty as an officer. Acquaint the Court in what instance you observed him not to perform his duty on the 27th of July?—I do not hold myself a competent judge of the conduct of an officer in so high a command. I came here as an evidence, not as a judge.

I do not ask you as a judge, far from it; it is a fair and direct question. I do not ask for your opinion, but your knowledge?—I beg to decline answering it. I am too young a man and too young an officer to answer that question.

Then, Sir, did Admiral Keppel, so far as came within your knowledge, by his conduct on the 27th or 28th of July, tarnish the honour of the British flag?—I also beg leave to decline answering that question for the reasons assigned.

Admiral Roddam. You say the French seemed to intend to renew the action, what was your reason for so thinking?—The French fleet forming their line to leeward of the British fleet.

When they were forming a line on the starboard tack, if they had intended to renew the action, could they not have fetched within distant shot of the British fleet, and engaged if they pleased?—They could.

You say you expressed your opinion, that you judged the Commander in Chief did not intend to renew the action that afternoon, after hauling down the signal for battle; what were your reasons for so judging?—Standing from them, and carrying so much sail, that we could not keep up with him, or preserve our distance.

Did you from the Formidable ever make any signal that you could not keep up with the Admiral?—No.

If you had made any such signal, do you not think the Commander in Chief would then have shortened sail?—It appeared to me the state of the Formidable was so apparent, there required no signal.

Is it the Commander in Chief's business to look after other ships, or are they to look out to him?—The junior officers are to look out for their signals, I can answer for no more.

Was not the signal for the line of battle out while the Victory was standing towards the enemy?—I neither saw it, nor heard of it.

Why did not the Formidable fire at the French ships which you say were so near you in the morning of the 28th, which would have

shewn the Admiral they were so near as one mile?—I must beg leave to submit that question to the Vice-Admiral.

Did he give you any orders?—No.

Captain Duncan. Was the *Formidable*, at any time of the day of the 27th, in any such condition as not to be manageable?—No.

Questions by Admiral Keppel.

Captain Bazely has, upon some occasions, refused to give his opinion, and in others he has given it, which is not quite consistent; he has given it as his opinion that the Admiral did not mean to renew the action, and he has given it as a reason for that opinion, that he carried so much sail; then I beg leave to ask him what sail the Admiral did carry when he stood to the southward, on the 27th of July in the afternoon?—I cannot particularly recollect the particular canvas you carried; my reason for so saying was the *Victory's* fore reaching the *Formidable*.

Were the *Victory's* top-gallant sails set?—I do not think they were.

Were her main tacks aboard?—I did not see her main-sail set.

Were the reefs out of her fore-sail?—I cannot say.

Were her gib or stay-sails set?—The situation of the *Formidable* was such that it is impossible for me to say what sails were set.

Pray then inform the Court how you know that the *Victory* had much sail set?—I mean to explain myself about much sail.

Admiral Keppel. A direct answer.

Witness. As the Admiral has declared he means to examine me close, I beg leave to recollect myself. In the disabled state the *Formidable* was in, what I have related to the Court is true, with respect to the *Victory's* being at that time, to the best of my recollection, under her top-sails and fore-sails.

Did not that sail suffer the French leading ship to range up a-breast under her top-sails, being parallel to the *Victory*?—To the best of my recollection, the van of the enemy's fleet appeared to me to be a-breast of the *Victory* about dark. The van of the enemy had only their top-sails.

At what time do you state the Vice-Admiral of the Red should have been called down to join on the larboard tack?—I do not pretend to judge, but the time the Vice-Admiral of the Blue alluded to in his question appeared to me applicable.

Do you understand the whole meaning of the 31st article of the fighting instructions?—I think I do; I have read it repeatedly.

Was any part of the British fleet leading with a large wind?—I do not remember any were.

Thirty-first article read. It states, that when the Admiral perceives any ships leading with a large wind, he is to hoist a particular flag, and fire a gun.

Do

Do you take upon you to say the Vice of the Red was not called down by message?—I do not know.

Do you know how many ships he then had with him?—With himself I think nine.

That is his whole division, save one?—I apprehend so.

You are sure of nine?—I cannot be positive; I think so.

Was the Vice-Admiral of the Red, at that time, or the Admiral, nearest to you?—The Vice-Admiral of the Red, and his division, appeared to me a mile to weather of the Formidable, and the Victory two miles distant when we passed the enemy's rear.

Was this the time you thought the Formidable might be cut off by the enemy's rear?—No, Sir, not after we passed them.

When was it?—Before we opened our fire it appeared to me very probable.

Do you know the state of the center division, and Vice of the Red, when they came out of action?—I know of none but my own ship.

Do you then feel yourself justified as an officer, in swearing that the action might have been renewed to advantage for us, as soon as the Vice of the Blue came out of action, if the Admiral had wore and doubled on the enemy, with the rest of the ships, at the same time and distance as the Formidable did?—I have said, that had the Vice of the Red and his division bore down, and if the Admiral had advanced with his division to have renewed the action, it would have obstructed the enemy from forming a line so speedily.

That does not answer my question.—That is the answer I wish to give, and must give.

Do you take upon you to say then, uninformed of any ship but your own, that the Admiral had a sufficient number of ships along with him near enough to support him on the larboard tack, formed in the line, to have prevented the French fleet forming their line on the starboard tack?—I don't recollect the Admiral being, in the afternoon of the 27th, in a line with any ships with him on the larboard tack.

When the Formidable passed the Victory while the Admiral was on the larboard tack, were there any ships a-head of the Victory with her on the same tack?—I don't recollect any.

At what time did you see the Vice-Admiral of the Red formed in a line in the rear of the British fleet, on the starboard tack, on the afternoon of the 27th?—I cannot speak to time.

Then you don't recollect when he quitted the station in the rear in forming the line a-head?—No.

You saw him in the Admiral's rear?—Yes.

What then was the situation of the French fleet when you saw him? I think forming a line a-stern of his, and to leeward withal.

What was the situation of the Vice-Admiral of the Red to the Vice of the Blue?—He was formed rather to the lee-beam of the Formidable, at no great distance to leeward, and a-stern of the Victory.

What course must the Formidable have steered from the wind to have come into the Admiral's wake in her station?—That depends on circumstances, as the weather, her advancement then towards the wake.

Did you ever set the Victory?—Not that afternoon by compass.

Were there any minutes kept of the bearings of the Admiral of the signals, or any thing about him?—Not of the bearings, but of the signals very incorrect ones, which I am ready to explain.

Who took them?—Two midshipmen. The Admiral took their names.

Where are they?—I never saw them after the battle.

How then do you know they are incorrect?—By the master's report.

FOURTEENTH DAY, FRIDAY, *January 22.*

CAPT. BAZELY, of the Formidable, was again called, to be cross-examined by Admiral Keppel.

Admiral Keppel. By whose nomination were the midshipmen appointed to observe signals?—By the Vice-Admiral's.

Had not the midshipmen who were appointed the best opportunity of taking them correctly?—That I cannot answer to.

Did they acknowledge at any time, and when, that their signals were erroneous?—They never did to me, nor I to them.

Was it the master that took upon him to enter the minutes in the log-book different from what they gave them?—I don't know that the log-book differed from the minutes taken by the midshipmen, but that I observed there was very little mention of signals in the log-book.

Pray can you state to the Court the difference?—I cannot; I wish to explain myself with respect to the incorrectness of these minutes; there were omissions supplied, but no erasements were made.

Can you take upon you to say, that the minutes and the log-book differ or agree with respect to signals?—I cannot say.

Does Captain Bazely know where the minutes are?—Since leaving the Court yesterday I have enquired of the master, and the different officers, if they knew any thing of the minutes of the signals, and I am informed that a Mr. Perry, late midshipman of the Formidable, and now lieutenant of the Triumphant, at Chatham, had taken these minutes out of the ship, which I had never heard of till this morning.

Was you told when they were delivered to Mr. Perry?—Yes; when Mr. Perry was appointed to observe signals on the ship, Mr. Hoggart and the other were appointed to do duty of mates of the ship.

In

In the morning of the 27th of July, how far were the ships to leeward that were ordered for chasing?—About half a mile on the Victory's lee-bow, and not quite a mile a-head withal.

Do you recollect what sail she was under?—At what hour in the morning?

At day-light.—Close reefed top-sails, fore and main-top-mast stay-sails, and the fore-course. At the time the signal was made to chase to windward, the main-sail was set, and two reefs let out of the top-sails.

You have said, that the Vice of the Blue was in a proper situation to take his station in the line of the larboard tack, had the signals been made for that purpose. I would ask you whether the Formidable, and the rest of the division, could have got right a-head of the Victory, without making a-board, or the Victory making down to leeward of them?—I apprehend the Formidable could not have got quite a-head of the Victory, without making a-board; or that the line could have been completely formed on that tack, without the Admiral's edging away for that purpose.

Was not the Vice of the Red and his division considerably to windward of the Victory?—To the best of my recollection on the weather quarter, and a-stern withal of the Victory, three miles distant from the Formidable.

Must they not have bore down also as far to leeward of the Admiral as the Formidable, and thereby increased the distance of the whole fleet from the French?—Yes.

When the signal was made for the whole fleet to tack that morning at ten o'clock, did the Formidable tack at the same time that the Victory did?—I think she did.

You are not sure?—I think she did.

At what hour did the Formidable back her mizen top-sails when drawing near the enemy?—I cannot answer particularly to the time.

You have said the mizen top-sail was backed to prevent you from getting into the Ocean's fire. How long was it backed?—Till she passed the French line.

Were not the ships a-head of you joined with the center when your mizen top-sails were a-back, so as that some of them were obliged to pass to leeward out of the line, on account of the ships a-stern pressing upon them, meaning a-head and a-stern of the Formidable?—To the ships a-head I cannot speak, only to one ship that passed under the Formidable's lee, as she was running down the French line.

Do you know the ship that bore away under the Formidable's lee? I do not.

Do you know what ship was next a-head of the Formidable during the action?—No.

Did you not back your mizen top-sail for the Ocean?—Yes, and as well for the ships a-stern to close.

How

How many of the French ships did you pass a-stern of the French Admiral after you began the engagement?—I did not count the ships at all while we were running down the French line.

May I ask where you was yourself at the time of running down the French line?—On the fore-part of the quarter-deck on the star-board side.

Looking at the enemy?—Yes.

How many three-decked ships had the French?—There appeared to me two.

Were they tolerably near together?—That I cannot answer.

How many French Admirals were there tolerably close together? I cannot tell.

Was the irregularity of the French line the cause that the Formidable engaged at different distances, or did the Formidable at times bear away?—The Formidable did at one time in the action going down bear up a little to get away from one of the enemy's ships, whose gih-boom nearly touched the Formidable's main-top-sail.

Did that ship which was so near, give a warm fire into the Formidable?—No, she appeared to be silenced before we reached her.

Then was not the Formidable and the ships a-stern succoured and supported by the ships who had engaged the French ships before them?—We certainly received less of the enemy's fire in consequence of the centre and the Red division passing before us.

As you have said that the Formidable wore after passing the rear of the French line, on seeing the Admiral advancing towards the enemy on the larboard tack, and that the officers and men on board the Formidable were ordered to quarters, expecting to renew the battle when the Admiral came up, I desire to know whether the Formidable did not wear again without signal, and pass a-stern of the Admiral whilst his head was toward the enemy?—Yes.

When you passed the Victory, was the signal for the line of battle flying?—I believe it was.

When the Vice-Admiral of the Red and his division made sail to get into his station, after being rear of the Admiral on the starboard tack, did he not pass between the Formidable and the centre division?—I do not recollect.

You think you saw the signal for the line of battle on the Victory as you passed her. Can you say it ever was hauled down?—I cannot charge my memory.

Don't you know when the signal for the line of battle was hoisted on board the Formidable?—I do not.

Are you positive it was flying at five o'clock on board the Formidable?—I think it was, but I cannot speak positively to that.

How do you know the time that the Fox came to the Formidable, when you say that you never observed time?—I judged it to be near sun-set.

What

What was the confusion you spoke of on board the *Formidable*?—Nothing more than what was natural to happen to a ship coming immediately out of battle.

At what time do you mean the confusion happened?—It continued the whole afternoon, in preparing to obey the Admiral's signal.

When you beat to arms, at two o'clock in the morning of the 28th, was it on the approach of any ships to leeward of you?—No.

Where was the *Formidable* at two o'clock in the morning, with respect to the Admiral?—A-stern, and to windward withal.

Did you see the Admiral's lights during the night?—Yes; most part of the night.

Were the distinguishing lights of the *Formidable* burning at that time?—No, they were not.

Were there any ships between the *Formidable* and the French ships he saw in the morning of the 28th?—I saw none.

President. I think you say the *Fox* cheered the *Formidable* first, and that you was upon the forecattle; can you take upon you to say that there was no cheer from the poop or quarter-deck of the *Formidable*, at the time the Captain of the *Fox* delivered the message from the Admiral?—None that I heard of.

You say that in a single ship you would have pursued a French ship into port, if after having been engaged with her you had seen her at the distance the nearest of the three French ships was from the *Formidable*; I ask you whether if the *Formidable* had been that ship, in the condition you have depicted her, when the supposed ship ran away, would you have pursued her upon a lee-shore?—The situation the *Formidable* was in, I would not have hesitated a moment to pursue her into port, if I had I should not think myself justifiable in a single ship.

I mean in the condition the *Formidable* was in when she left off engaging, I say again in that condition, and on a lee-shore, would you have pursued her?—Knowing myself upon a lee-shore, it depends upon the course I was steering, I do not know that coast, if I was upon a lee-shore, I would not have pursued; but what I call a lee-shore, is when the wind blows on the land, and I can see it.

Admiral Montague. From the strange account which Capt. Bazely has given of the minutes of the *Formidable*, I was led to look into the log-book, and I find three leaves cut out, including the time from the 24th to the 28th of July, and a new leaf inserted with a pack-thread, which contains a relation of the business on those days.

I shall be glad to know, Sir, how these three leaves came to be cut out of the *Formidable*'s log-book?—I do not know, to help me God.—Ordered to withdraw.

Sir RICHARD BICKERTON, of the *Terrible*, was then called by the prosecutor.

Sir Hugh Palliser. At what hour did you first see the French fleet on the morning of the 27th?—At five o'clock.

Did they appear to you any time that forenoon to be in a line of battle?—They did.

At what time had they that appearance to you?—Soon after I tacked; but I must observe to the court, that when I ranged along them I found they were not in that regular line of battle which I at first believed.

Do you remember some of the Vice of the Blue's division that morning chacing to windward by signal?—I do, about six o'clock; about four.

Do you remember whether there was not more than four chased when those signals were thrown out?—I do not know, I did not chace then, my ship was not one of the four.

Court. Do you know the names of the four?—Only of two, the Egmont and Robuste.

Were there not two more signals to chace?—I believe the Worcester's signal was made at the time the signal was made for the Terrible.

Did those signals cause that part of the fleet to be dispersed, and separated from their flag, and each other?—It certainly occasioned them to separate.

On the morning of the 27th of July, was the Vice of the Blue, with his division a-head of the Admiral, some on his lee-bow, some to windward, or how were they situated?—I think the Vice-Admiral of the Blue was a little to leeward of the Victory, and towards the lee-beams. The Terrible on his larboard bow.

President. Was the signal that was out, a means of bringing them to action sooner, or did it prevent them coming to action at that time?—It was a means of their fetching farther to windward, and engaging more of the enemy.

Sir Hugh Palliser. Was there any signal made for the whole division to chace?—I did not see it.

When ships chace from different situations, and which differ in their rates of sailing, can they one and all come into a situation to tack together?—I think not.

Was it not the Admiral's practice, when ships were chacing, to make the signal for them to tack when he judged proper for them so to do?—I do not remember he made it a practice.

Did the Admiral make such signal that morning?—I did not see it.

President. Then I suppose you tacked according to your own judgment?—I certainly did.

Sir Hugh Palliser. Did you tack before the general tack by signal?—I tacked a little before.

If those six ships had not been taken from the Vice-Admiral, might not the whole of that division have gone into action, together with their Admiral, in a connected body, to support each other, at the time the Vice-Admiral himself did?—We certainly should have been more connected, had we not chaced.

President.

President. Were you close upon a wind when you first began to engage?—Close upon a wind the first ship, but afterwards were obliged to keep away.

When your signal was thrown out to those, were you to windward or to leeward of the Vice-Admiral of the Blue?—I have said before I was upon his larboard bow.

Did not the chasing ships, so far as you know, come into action separately, without any other being near enough to support each other, as far as you know?—There were three ships a-stern of me, which appeared to be pretty near together.

Do you remember a time when the Terrible, in the thick of the smoke, run close on the Formidable's stern?—I remember the Formidable coming across me when I was engaged with the ship a-head of the Bretagne.

Do you know if any of the chasing ships passed a-head of the Vice of the Blue, and joined the centre division?—I do not.

At a time when you was so near to the Formidable, did you shoot a-head of her, or remain a-stern?—I remained a-stern for some time, but was afterwards obliged to bear up to prevent being aboard.

Admiral Montague. Was the Formidable's mizen-topmast a-back at that time?—I do not know the exact time, but I saw it a-back.

Did you see it a-back before you shot a-head of her?—I really do not know.

Captain Duncan. Were there any of our ships near you a-stern at that time?—I did not observe any. There was one to leeward near us.

Sir Hugh Palliser. In proceeding along the French line, did not our ships go large from the wind?—They went from the wind.

When you shot to leeward of the Formidable, how many ships of the Vice of the Blue's division remained a-stern of him?—I know of none but the three chasing ships.

Were they close up with him?—I did not take notice.

Did you shoot a-head of her?—Yes.

Did you find any other ship near to her there?—The America was very near to her.

Did you and the America go on a-head?—I know nothing of the America the smoke was so thick. I kept on myself, but did not go far a-head.

Was the America on the weather or the lee-bow?—On the lee-bow.

When you proceeded along the enemy's line, if it was not perfect, was it other than might be expected, after having passed with a number of ships that had passed before?—I do not know.

When you had passed the rear of the enemy's fleet, did you observe where the Admiral and the Vice of the Red were?—They were a-head of the Formidable.

Which way were they standing?—Towards the enemy,

At what distance were they?—I cannot say.

With what part of the French line did you begin to engage?—
The third ship.

By your description of the van and centre divisions being pretty well together, was not the Admiral of those divisions well supported with the whole force of their divisions?—At the great distance I was from them, I think they were.

From the separation of the Vice-Admiral of the Blue's division, did he go into action as well supported as the other flag officers?—I believe not.

Was he as well supported during the whole, or at any time of the action?—It is not in my power to answer that.

When you passed the rear of the enemy's fleet, did you observe where the Admiral and his division were, and where the Vice of the Red and his division were?—They were a-head of the Terrible, standing towards the enemy.

Did the Admiral, with the ships with him that passed the rear of the French fleet, wear so near to the enemy, as to be ready immediately to renew the fight, when the Vice of the Blue came out of it, or to countenance and support him, whilst he remained engaged with the few ships with him, when the Admiral had passed the whole?—The ship being greatly disabled, I was anxious to get her ready to renew the attack, therefore did not observe.

From the very brisk fire kept up by our ships, do you not think the French ships must have suffered in proportion to ours?—Some of them appeared to be disabled and others did not.

President. Inform the Court of some of the material damages you received in your masts, sails, and rigging?—Fore-yard shot through about fifteen feet from the larboard yard-arm, main-mast two shot in it, main-top mast one shot through, the mizen-mast shot through and carried away one-third of it, mizen-yard shot through, the rigging in general very much damaged, main-top and fore-sails cut to pieces, the other sails much damaged, five shot in her hull, which occasioned her to make much water, and obliged me to stand longer on that tack than I would.

Admiral Montague. You have just now said the French fleet were some of them disabled. Were the English ships in a condition to renew the attack at the time the Vice of the Blue speaks of, which was immediately after he came out of action?—From what appeared to me, I do not think they were.

Was your ship in a condition?—She was not.

Sir Hugh Palliser. Suppose you had been engaged along-side of a ship on the same tack not passing on contrary tacks, was not your ship in condition to continue the action in that one till it had been more decisive?—I certainly should have continued the action as long as I could.

Was

Was your ship in that condition that you would have been under a necessity of quitting the ship you must have been so engaged with?—No; for I should not have quitted the ship while I had any steering way, or guns mounted.

Admiral Arbuthnot. You have described the Vice of the Blue in the morning of the 27th, to be to leeward of the Admiral. If the Admiral had then bore down in the Vice-Admiral's wake, to form the line, as the wind then was, do you think the enemy would probably have been brought to action on that day?—That must depend entirely on the enemy; but I believe that if the Admiral had bore down in that manner, we should not have brought them to action, as they always avoided coming to action.

Admiral Montague. Did you not come into action as soon, although you chaced, as you would have done provided the Admiral had made a signal for a line of battle, and you had not chaced?—I believe sooner.

Sir Hugh Palliser. Do you remember what part of the French fleet the Formidable began the action with?—I never saw the Formidable in action till she began with the Bretagne.

What ship did the Victory begin action with?—I really cannot tell. If the Victory had been there, there is no doubt but she would have engaged where the Formidable did.

Admiral Montague. In the situation you was, so far distant from the centre and van, could you be a judge whether they were supported or not, how they engaged, or with what ships they engaged?—It was impossible.

Sir Hugh Palliser. If the Victory did not begin close action as far a-head of the Admiral as the Formidable did, would she not have been in a more advantageous situation for attacking the enemy, if she had been in a line with the Formidable?—I have said before, that if the Victory had been where the Formidable was, she would have begun action as the Formidable did.

I ask you, as an old officer, and one that knows the service well, whether you understand that a flag officer of a division has a right to call ships in from chacing, after the Commander in Chief has sent them to chace, without the Commander in Chief first makes the signal for calling them in?—I have never seen that done.

From the discipline of the service, do you think such flag officer has a right to do so?—I do not know.

Admiral Montague. I beg leave to ask Sir Richard Bickerton, in the situation the French fleet were then in, and the wind came so far favourable as to enable the British fleet to bring them to action, although the signal had been made to chace and no object in view but the French fleet, do you not think it your duty as an officer to return to the British fleet, and get into your station as soon as possible?—I do think it was my duty; and I did so. When I first saw the Admiral make the signal for the chace, I mentioned to my officers that the intention of that signal was to bring the enemy to action at all events; and as soon as I saw the wind become favourable, and
that

that we brought the enemy's last ship very near a-head, I tacked, and thought it my duty to join the line as soon as possible.

Sir Hugh Palliser. Did you think it your duty to get into action as soon as possible under that signal?—I have said before I thought it my duty to go into action.

Now do you think the Vice-Admiral of the Blue could have been authorized in calling in those ships that were chasing to get into their station, the Commander in Chief having made no signal for that purpose?—I don't know.

Did you notice the Formidable, when engaged, or after?—I took notice of her when we bore up, when we came out of action.

How soon, or when, after the action, did you take notice of the *she* being the flag of your division?—About three in the afternoon, I think.

At what time was the signal for battle flying?—I do not know.

Where was the Vice of the Blue when you saw him at three o'clock, with respect to the rest of the fleet?—I really cannot tell.

At what time do you remember seeing him when you can remember where he was?—After I wore, I think I went to the windward of him in my station.

I think you say the Admiral, when you first saw him, was towards the enemy?—He was.

Did you see him wear to the southward?—I did not; I continued on the same tack, being unable to change it, owing to my defects, I could not therefore see the Admiral then, but while on that tack I think I passed to leeward of him, and cheered him.

Where was the Vice of the Red when the engagement ceased?—To windward of the Admiral a little, I think.

Did you observe when the French broke up their line, and began to stand to the southward?—No.

When did you first see any of them standing to?—A little before I wore.

Was not the Vice of the Blue and his division in the last that came from action, or what other ships?—They were the last.

While you stood with your head to the southward, was the French fleet a-stern?—We lay to, but did not stand to the southward; I cannot say whether they were coming to, or falling off.

Did the fleet with the Admiral stand to the southward all that afternoon?—Yes.

Did Sir Robert Harland bear into the Admiral's wake that afternoon?—I do not recollect indeed.

Did you ever know, during your service, whilst the signal for line of battle a-head was flying, the Commander in Chief, order the van or center division to take place of the other, without knowing one of them was disabled to take their proper station?—No.

Which

Which division, according to the line of battle was to lead on the starboard tack?—The Vice of the Red.

Was there a signal for ships to windward to bear down to a number of particular ships pennants flying?—Yes.

Was the Terrible's one?—Yes.

Do you remember that when I saw you after, you seemed concerned that it should be thought requisite?—I remember it.

Do you recollect when you got down among the ships that you was not able to keep your station out of other ships way?—I believe I do.

What time did you bear down?—A little before seven.

Where then was the van of the French who were forming then a line to leeward?—Before the wind.

What sail had the Victory that afternoon when you looked at her?—I don't recollect.

Do you remember any signal by the French fleet that night, and at what time?—There were some false fires at eleven.

Were they pretty near you before the signals were made?—About, I think, three or four miles off.

What part of them was in sight next morning?—Three sail.

Line of battle ships or frigates?—I took one to be line of battle, the other frigates.

How near was the nearest to the Terrible?—Four or five miles.

In what position were they from the Terrible?—Upon the larboard quarter.

At what time was this?—Soon after dawn.

Which way stood they?—Southward.

Did they croud sail and bear away more after, or how?—They did bear away as soon as they discovered us.

Were they pursued?—Not that I saw; there were signals out for ships to chase, which were soon called in again.

Was any other part of the French fleet seen that morning?—I did not see any.

Do you know of any signal being made at seeing any?—I do no.

Suppose the British fleet had chased those three ships, and supposing the rest of the French fleet to have been to leeward, was there not a probability of our able ships coming up with these three ships, or the disabled French ships, if the rest left them, or if they stayed by them, might not another action have been brought on?—I think not.

What weather was it that morning?—Rather hazy, the wind was not extreme, the sea tolerable.

What reason have you to think if the three ships had been chased they might not have been taken by our able ships?—There appeared to me very few able.

None?—There might be a few.

You suppose two of them frigates; had we not four frigates?—We had, some with copper bottoms.

Then it being the middle of summer, the nights short, and wind low, would it have been attended with any imminent danger if the British fleet had pursued, at least till they had seen the French fleet into port, none of ours having lost their masts?—Carrying a fleet on a lee-shore, disabled as ours was, must have been very dangerous. Ushant bore E. and by N. 34, by the master's reckoning on that day.

Court. You saw the three French ships standing to the southward; the medium of the 27th and 28th is about East half North from Ushant; do you think if you had steered that course for Ushant you should probably have seen the French fleet?—We might have seen them on the 28th, but at a very great distance.

Admiral Montague. Suppose the French fleet had not run away in the night, but continued to lay to leeward, or jogging on with the British fleet on a parallel line, do you think the Admiral would have attacked them in the morning, although he did not pursue them then, or think it proper to chase the three ships seen in the morning?—I do most certainly think he would.

Admiral Montague. You are an old officer; you have been more than once in action; you served under a very brave man, Admiral Boscawen; the Admiral now trying, is charged with negligently performing the duty imposed on him; was he, to your knowledge, on the 27th of July, guilty of this charge?—Ever since I had the honour to know Admiral Keppel, and serve under him, I have had the greatest esteem for him, and the highest opinion of him as an officer, and I have to still; but as I have given my evidence, the Court must judge of the facts I have stated, not I.

Then I am to suppose you do not know of any such neglect on the part of the Admiral?—I must beg to move the Court to retire. The Court retired, and resolving the question proper, the witness answered, I do not.

Admiral Keppel. Sir, it gives me great uneasiness, when I am forced to ask the indulgence of the Court so much beyond their usual hour; but when I see such a shameful and alarming circumstance as three leaves to be cut out of a log-book, especially in so material a part, a part that affects my life, I must intreat their indulgence, late in the day as it is, that the master of the Formidable may be immediately called in and examined to that part, and not defer that business until to-morrow.

Sir Hugh Palliser. I shall, in the course of calling witnesses, call him among the rest.

Admiral Keppel. I must, with the indulgence of the Court, desire he may be called now.

Admiral Montague. It being so exceeding late, I must beg that we adjourn until to-morrow, and that the master be ordered to attend.

Admiral Keppel. I beg that my request may be entered on the minutes. Agreed to.

FIFTEENTH DAY, SATURDAY, *January 23.*

AT ten o'clock the Court was resumed, when Sir Richard Bickerton, of the *Terrible*, was again called to be questioned by the Admiral.

Admiral Keppel. On what tack were the French fleet when they appeared to you to be in a line of battle at ten o'clock?—On the larboard tack.

Did the *Formidable* fetch in a-head of the *Terrible*, of the French fleet?—She did.

How many ships of the rear of the French fleet had the *Formidable* to pass when you was obliged to beat up and go to leeward of her? I think there were three.

Did the ships of the Vice-Admiral of the Blue that were a-stern of them, come out of action nearly at the same time as the *Terrible*?—I cannot say.

What time did the *Terrible* come out of action?—About half past one o'clock.

Admiral Keppel said he would not trouble him with any more questions.

Sir Hugh Palliser then addressed the Court. Mr. President, The cutting the leaves out of the *Formidable's* log-book was a fact that I was perfectly ignorant of, till it was observed yesterday by a member of the Court. It is a matter which I am anxious to have investigated, and for that purpose I have ordered the master of the *Formidable*, and the mate who made the entries, to attend, [They were ordered by the Court to attend] and I desire that they may be put to the severest test. I wish them to be examined by the Court and Admiral Keppel, without any previous questions from me.

WILLIAM FORFAR, Master of the *Formidable*, was then called and sworn.

President. You have given in your log-book, and have sworn, that it is the original log-book which was kept by you, without alteration or addition, have you not?—Yes.

Admiral Keppel. The reason why I desired that the master of the *Formidable* should be *instantly* examined, was to prevent any intermediate communication between him and others; therefore I must ask him who was the first that informed him the Court had discovered any extraordinary appearance in the log-book?—I heard it in a shop yesterday about noon. A woman in the shop telling another person of it.

Had you any conversation with any body, and with whom, touching the log-book, before the Court rose yesterday?—There were several; I don't exactly know their names.

What time was it those questions were asked you?—When I heard the log-book was called in question, I came into the Court about one o'clock, or two, on purpose to be examined, if I had been called.

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Can you name nobody that spoke to you before you went into the Court?—I met Mr. Bayley, master of the *Foudroyant*, who told me I should be wanted.

Did any body else speak to you?—Not till I came into the examining room.

Did any body speak to you in the examining room?—I think Captain Wallingham. He said he supposed I was there on account of the log-book.

To whose house did you go after the Court was up?—I went to the house next door to the Vice-Admiral's.

Do you live there?—I do not.

Had you any discourse about the log-book after the Court broke up?—Yes.

With whom?—Captain Bazely.

Does Captain Bazely live at that house you went to after the Court broke up?—Yes, he sleeps there.

How long did you remain at Captain Bazely's house before you went to Sir Hugh Palliser?—I cannot justly say; not long, about half an hour.

How long did you stay at Sir Hugh Palliser's?—

Sir Hugh here interrupted the Admiral with saying, that he certainly had conversed with him on the subject.

Admiral Keppel observed, that as the prosecutor had said, he wished that the witness might be examined closely, he hoped he would not now defeat that wish.

It might be an hour, or an hour and a half.

Who was present at the time?—Almost all the officers who were on shore.

Name as many as you can?—Captain Bazely, Mr. Waller, Mr. Dickson, Mr. Hills, Mr. Meredith, Mr. Holmes, Mr. Thomas, and Mr. Hartwell; and the two lawyers, Mr. Hargrave and Mr. Ashley.

Were there any questions put to you about the log-book?—Yes.

When were the incidents of the 25th, 26th, 27th, and 28th days of July entered as they are now in the log-book?—The 25th and 26th days were taken from the log-board, and entered on the same day they were taken.

The 27th?—The 27th was not entered in that book till a day or two after. I believe it was put in the 30th.

What was the meaning of that delay?—I took it off upon a sheet of paper from the log-board, to shew it to the Captain and the Admiral before I entered it into my log-book.

And was it approved of without amendment, alteration, or addition?—Some things were added from recollection that had been omitted.

What

What were they?—I do not recollect exactly. They respected signals and time, I believe.

Were there any minutes of signals taken by any body, that this log-book was copied from?—There were before the time we came to action.

And were there no minutes taken after that time during the rest of the day?—None that I saw except by recollection.

Are there more than one log-book?—Yes, I have another.

Is that exact as the one on the table?—It is, except in the three ships whose signals were made to chase in the morning of the 28th, that is interlined in the one I have with me.

When was that interlineation?—About the time we came to lye at Spithead.

That circumstance is not in the log-book upon the table?—I believe not.

Do you know who made out the original minutes out of the log-book of the 25th, 26th, 27th, and 28th?—Yes, one of the mates, Mr. Weekworth.

What was the reason of these leaves being cut out?—One I saw cut out. Mr. Weekworth had spilt some ink upon it.

What time was it?—To the best of my knowledge it was on the 26th.

When were the rest torn out?—I did not see the rest torn out. I believe they were torn out at the same time.

Admiral Montague. Recollect yourself. It could not be at the same time. The leaves contain the transactions of the 27th; they could not be cut out till after that time.—Mr. Weekworth told me he had ruled one of the leaves for two days work, and it could not contain it; he had also omitted putting in the midshipman's minutes respecting the signals, and that he told me was the reason of his tearing the leaf out.

Do you mean relative to the signals of the 27th and 28th?—Only the 27th.

Did the mate shew you the minutes?—I gave him the book, and he had written them before I came down.

Did you see the minutes he wrote it from?—I did.

And do these leaves agree with the minutes?—They do.

Do you know where those leaves are?—I do not know; they were thrown away, I believe.

Do you know where the original minutes, from which the entries of the log-book were taken, are?—No.

As these minutes of the 27th and 28th were not entered as you say before the 30th, how could the mate have entered them before you went down on the 26th?—He took them off the board.

Did the board continue marked from the 26th to the 30th?—No. When he spoiled them with ink, he copied them over upon a fresh piece of paper.

Did you ever go to any masters of the ships in the fleet under my command, and ask to see their log-book?—No.

Did you not ask Mr. Reid, master of the *Queen*, to see his log-book, and compared it with the *Formidable's*?—I went on board of the *Queen*, and he was writing his log-book, and I looked at it; but I do not remember comparing it with my own.

Had you the *Formidable's* log-book with you when you was aboard?—Never.

Did you compare the entry from the sheet that was blotted, to see that it was fairly transcribed?—I do not recollect I took any notice of it.

Was the log-book, now under your arm, made after the cutting out of the leaves of that on the table, or before?—Copied after the leaves were cut out.

You mean that they were not copied till the 30th?—Yes.

Admiral Montague. After the action was over, did you see the minutes taken by the Midshipman in the book appointed for that purpose?—I saw what he had made before ten in the morning; he made none afterwards.

All that were kept that day you saw?—Yes.

Had you those minutes in your possession?—Yes, I had them after the action; the Midshipman gave me the book.

Did you shew those minutes to the Captain, to know if he approved them?—I copied them on the paper I took the log on first.

Did you not tell the Captain the minutes taken on the poop were erroneous?—No; I only told him the midshipman had taken no notice after the action began.

How did you know they were not all taken?—By recollection.

Did you enter them exactly on the log-board, or did you alter them, knowing them to be erroneous?—They were not entered on the log-board in general.

Is it not usual for the mate, while at sea, to mark the log-board every hour, and have such remarks of transactions as happened in that hour?—It is usual; but in a fleet the signals are so many, that a board would not contain them; and our mates, not being accustomed to mark the board, they took it from the midshipman's minutes.

Then how comes it that the midshipman's minutes were not taken down of that day's work, for there were only two signals of all that were thrown out that day taken account of?—I believe the only minutes he took were in the afternoon of the 26th, and the morning of the 27th, and the signal for the three ships chasing in the morning of the 28th.

From

From what book did you take your materials for working the ship's reckoning?—From the board.

Did you take that every four hours from the board, or at mid-day?—I generally worked my reckoning at eight in the morning, for fear I should be asked any questions either by the Captain or the Admiral.

You have said, that two of the ship-mates were not expert in marking the log-board, or in writing it in the log-book. Did those two mates consult with you before they entered on the log-book the transactions of the day?—I generally examined the board in the morning, to see what had been done in the night, and pointed out to them what was wrong.

Did you give any order, or point out any thing to them that was wrong on the 27th or 28th?—I do not recollect particularly that I did.

Admiral Keppel. Do you take upon you positively to swear that there were no minutes taken of the signals after the action ceased, until it was dark?—I saw none, except by recollection.

As the midshipmen were appointed to take and to enter the signals in a book, why were those entries discontinued on so important a day as the 27th?—I can give no other reason than that they were employed on other business.

Admiral Keppel then addressed the Court nearly in the following words:—"Mr. President, I shall ask the witness no more questions, but I cannot withhold my surprize, that the midshipman who was appointed to take the signals that day, should only take notice of the signal for chasing in the morning, which the prosecutor dwells so much upon, and omit every other signal that was made in the course of the day for calling those ships together. And I must also remark, that notwithstanding the prosecutor's address to the Court carried the appearance of candour, in leaving the witness to be examined by the Court and me, without any previous question from himself, I find it has turned out exactly as I foresaw yesterday, when he resisted my requisition for calling the master immediately, and that he has been previously examined by himself and his friends."

Sir Hugh Palliser then addressed the Court in a short apology for his conduct. He said he had not resisted his examination, nor spoken on the subject till it had become the proposition and the act of the Court to call him; that he wished for nothing more than the discovery of the matter, and that he had for this purpose dispatched expresses to find the midshipman who succeeded to him, who had been appointed to take the minutes, and in whose hands he was told the original minutes were.

Admiral Keppel. I beg to refer to the memory of the Court, whether the prosecutor did not say, that the calling of the masters then would interrupt him in the course of his evidence, when I desired the master might be examined instantly, to prevent, as I have said, any intermediate communication between him and others.

This

This circumstance, so strongly in the recollection of all the Court, was immediately acknowledged, and Sir Hugh Palliser offered no further defence.

Admiral Montague. Before I put a question which I have to put to the master, I must beg the Court's leave to read the narrative from the log-book or the *Formidable* of the 27th of July, as written in one of the new-inserted leaves. Mr. Forfar, you say, you did not dictate to the mates on the 27th and 28th days of July. I will read the minutes to you, and then I beg of you to inform the Court whether they are your composition or their's.

[Admiral Montague here read the narrative. The minutes state, that after having beat about for four days after an enemy, who constantly, during that time, had exerted all endeavours to avoid us, we at last, by an extraordinary effort, brought them to action, wherein they felt the full force of British superiority, and were glad in the afternoon to sheer off, taking the advantage of some of our ships being disabled, which prevented the action from being immediately renewed; that, however, they were in expectation, from seeing them form their line of battle, that they meant to renew the engagement next morning; but, to their no small surprise, they were flown before morning, all save three ships being out of sight, and which crouded sail and made after the others as fast as possible.]

The Admiral now proposed his question. Are these your composition or the mates' ?—I took the log off the board myself, upon a piece of paper, and put down what signals I could myself. I shewed it to the Captain. He desired me to shew it to the Admiral; I did so. He approved of some places, and disapproved of others; gave me a piece of paper with some remarks that he had made; so between the two, I made the log up of that day with what I thought were facts.

Was that log as it is approved by the Admiral ?—It was.

Sir Hugh Palliser. Do you know, or have you reason to believe, that either myself or Capt. Bazely had any knowledge of the leaves being cut out before yesterday, when it appeared to the Court ?—I don't believe you had.

Captain Duncan. At what time did you leave the witnesses' room yesterday ?—When the Court broke up.

Do you recollect what time you was on board the *Queen*, and saw the log-book ?—A week before she sailed the last time with Lord Shulldham.—[Ordered to withdraw.]

ROBERT WEEKWORTH, master's mate, was then called, but Admiral Keppel said, as the original minutes were to be produced, he would question him at that time.

Mr. KINEER, First Lieutenant of the *Formidable*, and now a Captain of the *Carcafs*, was called by the prosecutor.

Sir Hugh Palliser. After the time that the *Formidable* had ceased firing, and had turned her head towards the enemy, do you remember

ber the men being ordered to return to their quarters, in expectation of renewing the engagement, when Admiral Keppel should come up?—Yes.

When did you first take notice where Admiral Keppel was?—Not till he wore the second time.

At what distance was he?—Between a mile and a half and two miles.

Do you remember the Victory passing to windward, and under the Formidable's stern?—Yes.

Was the signal for the line of battle a-head, or a cable's length afunder, then flying on board the Victory and Formidable?—It was on board the Victory, but I am not certain as to the Formidable.

Do you remember the Formidable's hauling to windward out of the way of other ships, for them to take their stations between us and the Admiral, and afterwards to stand after the Admiral with all the sail she could set?—I do.

Did not the Victory increase her distance from the Formidable all the afternoon?—I believe she did in some small degree.

Did not the Formidable steer the whole afternoon, keeping the Admiral a little to lee?—Yes.

Was that a proper course for fetching her station in the line of battle, if the Victory had not sailed faster than us?—I think it was.

As the Admiral sailed faster than the Formidable in some small degree; whilst she continued to do so, was it possible for the Formidable to get into her station, according to the signal then flying?—I do not think it was possible.

Then whatever signals might be made, or whatever messages might be sent, was it possible for the Formidable to get into her station unless the Admiral had waited for her?—I think not.

Do you remember the signal being made in the evening for ships to windward to bear down; several ships' pennants let fly at the same time?—I saw them, but cannot say whether they were all let fly at the same time.

Were those signals repeated by the Formidable before or after the Fox came to her?—To the best of my recollection they were made before.

Do you remember whether the Fox cheered the Formidable first, or the Formidable the Fox?—I am pretty clear the Fox cheered the Formidable first.

Where was you stationed at that time, carrying on the business of repairing the rigging?—On the poop.

Did the people on the poop cheer the Fox first?—No.

At what distance was the Formidable from the Victory that evening at dusk?—I believe she was about one mile to windward of the Victory's wake, and about three miles a-stern.

About what time was it, do you think, that the Fox came to the Formidable?—About seven o'clock.

President. What was the message she delivered?—I did not hear it distinctly.

But what you did hear?—I think the purport was for the Vice-Admiral's division to bear down into the Admiral's wake.

Do you remember any of the ships signals that had been hauled in, in consequence of their being answered before the Fox came to her?—I remember two of them were hauled in shortly after the Fox came.

Are you of opinion, that if the fleet had gone down to renew the action, the Formidable might or not have gone to attack the enemy, notwithstanding that she could not carry sail upon a wind?—Yes; but she could not have maintained her station in a line at a cable's length afunder.

Did the Admiral, at any time in the afternoon, bring her to, to permit the ships to come up with him?—Not that I observed.

Were not the men employed all that afternoon, and night, in repairing the rigging and sails?—Yes.

Was all done that could possibly be done to keep up with the Admiral?—I believe there was nothing neglected by the officers or Admiral.

Did not the drum beat to arms at two in the morning of the 28th? Nearly about that time.

Were not all hands at quarters, and the ship in her station before day-light, immediately to engage?—All hands were at quarters, and the Formidable was in a line a-stern of the Admiral; but I cannot say whether she was exactly in her station, ready to engage; and we were in expectation of receiving orders to begin firing, when it was discovered there were only three sail in sight.

At day-light how near was the nearest of these three strange sail? Till the guns were secured, and they had bore away, and then the nearest was something more than a mile.

Captain Boteler. As you were upon the poop, I should be glad to know if the log was hove from three in the afternoon of the 27th, to four in the morning of the 28th?—I did not see it at any time hove, I was so much engaged that I could not attend to that circumstance.

Cross-Examination by Admiral Keppel.

Captain Kineer said, the Formidable, after having wore towards the enemy, wore backwards towards the Victory, while the Victory was standing with her head to the enemy; did the Formidable wear a second time by signal?—I have already said I did not see the Victory till the Formidable had wore a second time, consequently cannot say whether there was any signal or not.

How was the Victory with respect to the Formidable when you did see her?—She was on her starboard bow, on the opposite point of the compass, standing towards her.

Did

Did you then observe the signal for the line of battle a-head flying on board the Victory?—No.

Did you when the Formidable passed her?—No, not till she went under the Formidable's stern.

What sail had the Formidable set when she passed the Victory?—I do not recollect.

What sail had she when her head was towards the enemy?—I do not know.

What sail did the Victory go under the whole afternoon, or any part of it, when you observed her?—I took very little notice of the Victory during the afternoon, being engaged in repairing damages.

How did you take notice that she encreased her distance from the Formidable then?—I observed that the Victory was further from the Formidable in the evening, than at three o'clock.

Was she further off than she was at four o'clock?—I cannot tell.

Did you ever set the Victory by compass that afternoon?—No.

Did the Formidable unbend any of her sails that afternoon, in order to bend others?—I cannot tell.

Do you remember when the fore-top-sail was unbent?—I do not.

Do you remember within an hour or two?—No; but I believe they were both set by half after eight.

Then you do not know when the fore-top-sail was unbent?—I do not.

You say it was bent, and set at half after eight?—I believe it was.

Was there any fore-top-sail to the yard at half past seven?—I cannot tell.

Was there any at half past six?—I cannot tell.

Was there any at half past five?—I cannot tell.

Was there any at half past four?—I cannot tell.

When did you first see the signal for ships to bear into the Admiral's wake?—I believe it was about seven o'clock, but I cannot speak to time.

Did you not see it sooner?—I cannot say that I saw it till the pennants were let fly.

How long was you upon the poop?—I was ordered on the poop about three o'clock, but I am not sure of the exact time, and was there most part of the afternoon.

The log was never hove all that time?—I did not see it hove.

There was no want of seamen in the Formidable to expedite business as soon as a well manned ship could expedite business?—The Formidable was manned as other ships, of seamen, landmen, and ordinary men.

Then she was but indifferently manned?—Nothing remarkable either one way or another.

Were they sober and orderly all that afternoon?—I believe they were sober and orderly in general. There might be one or two in liquor.

Upon recollection, are you sure it was seven o'clock when the Fox came to the Formidable?—I have not spoke to time with any certainty.

Do you think it was half an hour after six?—I believe it was later.

Captain Duncan. What sail did you wear twice under?—The fore-sail and top-sail, I believe, only.

Were the top-sails cut?—I cannot recollect.

You said some time ago that on the morning of the 28th one of the strange ships was within or about one mile from the Formidable. Did you fire at her, or make any signals to the Admiral, or make any preparation for chasing?—I believe I have said that the nearest of those ships were more than a mile. We did not fire at her, nor make any signal to the Admiral.

When did the sun set?—A quarter before eight.

Admiral Keppel. I won't trouble him any more.

Captain Duncan. What sail did you wear the Formidable twice under?—I believe the fore-sail and top-sail only.

SIXTEENTH DAY, MONDAY, Jan. 25.

AT ten o'clock the Court was resumed, when Capt. GOODALL, of the Defiance, was called to give evidence on the part of the prosecution.

Sir Hugh Palliser. When did you first see the French fleet on the 27th of July?—About five or six o'clock.

Did they appear to you at that time in a line of battle?—They did not.

With what ship did you begin the engagement?—With the headmost ships of the centre division.

Was your ship one of those that chased by signal?—It was not.

When you began the engagement, were any of our ships then near you so as to be of support to each other?—Soon after I began the engagement, I drew up to the Prince George.

Then by drawing near the Prince George, you joined the centre division, did you not?—I apprehend she belonged to the centre division.

Was not your ship properly one of the Vice of the Blue's division?—Yes.

In the engagement, did any of the British ships fire over you, or you over them?—No.

When you passed the rear of the enemy, where was you with respect to the Victory?—The Victory was on my lee-bow.

To what distance did the Victory stand before she wore ?—About half a mile upon the Defiance's lee-bow, and she wore soon afterwards.

What distance was the Defiance from the rear of the enemy at that time ?—Three or four cables length. I speak of the time when the Victory wore and laid his head to the enemy again.

What distance might the Victory be at that time ?—I suppose a mile.

When was the signal for battle hauled down ?—About two o'clock, or a quarter after.

Was that before or after the Victory wore ?—After.

Did you see any of the ships of the English fleet at that time dismasted ?—No.

Did you see the Admiral wear the second time ?—Yes.

Where was the Vice-Admiral of the Red, and his division at that time ?—They were to windward.

Had they wore and stood to the northward before the Victory ?—I think so.

Then were they advanced more towards the enemy than the Admiral was when he wore a second time ?—They appeared to me to be so.

When did you first take notice of the Vice of the Blue ?—When he was near the Victory.

Did you never take notice of the ships that remained engaged after you came out of the action ?—I did not take sufficient notice to retain any idea about them.

Did you know of any reason why the Admiral and the rest of the fleet might not have wore at a nearer distance than a mile or a mile and a half from the enemy ?—I do not.

If they had done so, do you know any reason why the engagement might not have been continued or renewed when the Vice-Admiral of the Blue came out of the engagement ?—The disabled state of several ships, and the separation of others, was a reason why I think the Admiral could not collect a formidable number of ships to renew the engagement.

Did you know of any other ships being disabled beside your own ?—They appeared to me to be disabled in their sails and rigging.

From the brisk fire kept up by our ships, have you not reason to suppose the enemy suffered in proportion to ours ?—They did not appear to have suffered so much in their sails and rigging as ours, but I am persuaded they suffered more in their hulls and loss of men.

Would the ships have been scattered and separated, as you have said they were, after the engagement, if there had been a line of battle, which confines every Captain to his station ?—They were separated, but not scattered or divided so much as not to be collected in a certain time. They certainly would have been more connected if the two fleets had engaged one another in regular lines.

President. Do you think the engagement would have been brought on that day, if the Admiral had made a signal for the line of battle, in the position the fleets were in the morning of that day?—No. The Admiral had always offered the enemy battle, and it was in their breasts to accept of it; and I am sensible, if he had formed a line of battle that day, it would have been impossible to have attacked the enemy.

Did not the French fleet edge down and make the attack?—They partly edged down, and they were partly met with.

Did they edge down before the engagement began?—I cannot positively answer that, but I do not think their van did edge down.

Did it appear to you from their forming a new line of battle in the evening, and standing towards the British fleet, that they were disposed to renew the attack?—It indicated a disposition to receive an attack, but they had it in their power by carrying more sail to have made one.

How many ships did you see disabled in their sails and rigging after the engagement?—Ten or a dozen of them I saw with my own eyes.

Were they not in a condition to attack an enemy that shewed a disposition to receive them?—Towards the close of the day they were.

Was your ship in a condition to have renewed the engagement, if you had got along-side of an enemy?—She was ready for action thirty or forty minutes after.

Did you see the Vice-Admiral of the Red bear down into the Admiral's wake that afternoon?—I saw the Vice-Admiral of the Red bear away to a position a-head.

Do you know if he was ordered to take the station of the Vice-Admiral of the Blue?—No.

Was not the Vice-Admiral of the Blue the last that came out of the engagement?—I believe so.

Were not the ships of that division those that you speak of as disabled in their sails and rigging?—Some of that division, and some of the others.

Can you speak with certainty that some of them were of the other divisions?—Not with certainty, but I presume so, as many of them were on my lee-bow.

Did you discern what sail the Victory carried when she stood to the southward?—I think, when she first stood to the southward, she had her fore-sail and top-sails, and soon afterwards her top-sails only.

What part of the French fleet were in sight the next morning?—Three sail of ships were about two miles a-stern of the Defiance, but the body of the French fleet was not seen by the Defiance.

Did you take those three ships to be line of battle ships?—The nearest I took to be a line of battle ship, the others were smaller.

Were they chased by the British fleet?—I believe they were.

By what ships?—I cannot say by what ships.

Did

Did they set all their sails?—That I cannot say.

Was there any signal made for leaving off chase?—I do not recollect.

Did they appear to you to be nearer to any other part of the English fleet?—They must be somewhat nearer to the ships that were astern of the line.

Among those ships that you say were disabled after the engagement, were any of them of the Red division?—I do not recollect.

Suppose that there were ten or twelve disabled ships, were there not eighteen or twenty that were not so?—The ships that were disabled in their sails and rigging, drew most of my attention, but there might be eighteen or twenty not disabled.

Were the frigates disabled?—I do not remember to have seen a frigate from the time I engaged, nor during the whole of the afternoon.

Admiral Montague. You have heard the charges against Admiral Keppel read. By the first he is charged with negligently performing the duty imposed on him. By the third, with not doing all in his power to burn, sink, and destroy the French fleet. By the fourth, with putting his fleet in a disgraceful posture, which carried the appearance of flight, and gave the French an opportunity of pursuing the English fleet, and a pretence for saying the British fleet run away. And by the fifth with tarnishing the honour of the British flag. Now, Sir, you will acquaint the Court of the different instances in which Admiral Keppel was guilty of these charges, either on the 27th or 28th of July; and remember, I do not ask your opinion but from your knowledge?—Sir, no man can have more respect or esteem for Admiral Keppel than I have; and I think him a valuable character both as an officer and a gentleman; but I must decline answering a question that calls for my opinion on the evidence I have given; it would I think render my evidence nugatory, and appear an assumption on the Court, who are alone to judge of the charges by the evidence adduced.

I do not ask for your opinion or your judgment, I am one of those who are to judge, acquit, or condemn on the charges, and I ask only for information to enable me to do so. A charge is sent to us, and evidence is adduced, with which I am to judge, and I think I have asked a fair and direct question, equitable both to my country and the prisoner; to my country, since if Admiral Keppel has been guilty of these charges, I wish that his guilt may be published to the Court. To the prisoner, since if he is innocent, I wish his innocence may be published; and I ask you to declare what you know of either, from what you saw of his conduct on those days?—As a witness, I have further objection to answering a question that gives an opinion as my own experience; it would be establishing a precedent which might in future affect perhaps myself, or those I love, in character, reputation, or life. On accusations of malignity it might in future be made a precedent, and the opinions of witnesses might be brought in support of the charge.

If every witness objects to answering the questions that are put to him, the Court cannot be competent to a judgment on the charge?—If these questions of opinion had been asked before I gave my relation of facts, I should have had no objection to answering them.

I do not conceive that you are to direct the Court when to make their questions.—But I have done.

Cross-Examination by Admiral Keppel.

Where was the *Defiance* on the morning of the 27th?—On the lee-quarter of the *Formidable*.

Did you see the signal for any ships to chase to windward?—I did not see it, but was informed of it soon after.

What sail was you under at that time?—Fore-sail and double reefed top-sails.

Did you make more sail on the signal being made to chase?—No.

You said you came to action close a-stern of the *Prince George*. Were not several ships engaged a-head of the *Prince George*?—The enemy had fired about 15 rounds at the *Defiance* before she returned the fire, and when she came to close action and had fired five or six broadsides, I perceived the *Prince George* and drew very soon afterwards close up with her.

At this time did the *Sandwich* or any other ship draw up a-stern of the *Defiance*?—I did not see any ship a-stern for some distance.

You say you received the fire of several ships of the French line before you begun action. With what ship a-head or a-stern of the French Admiral did you begin action?—The second ship a-head.

How many ships were there a-stern of the French Admiral in the 100 gun ship?—I really do not recollect, nor could I count them the smoke was so great.

Were there eight or nine?—There might be that number.

Were the French flag-ships together?—Two I think were very near together.

Was the French Admiral in the centre of his fleet?—I think he was.

Did you see the signal for the line of battle flying on board the *Victory*, when she stood on the larboard tack towards the enemy?—I did.

How many ships did you see formed in a line with her, a-head or a-stern, while she continued on that tack?—To the best of my judgment there were not many.

Were there any?—There were.

Can you name them?—If I mistake not, the *Foudroyant*; the *Prince George* might be another.

Had you repaired your own damages, so as to be able to get into the line yourself at that time?—I had then wore, and was standing on after Sir Robert Harland.

Was

Was you able to get a-head of the *Victory* while standing on that tack, with the signal for the line flying?—We had wore with our rigging still in a disordered state, except what contributed to wear; and bringing on canvas as fast as possible. We were much to windward of the *Victory*, which was on our lee-beam.

Was you able to take your station, which was a-head of the *Victory*. Were your damages so repaired as to enable you to take your station while she was on that tack?—Had the signal for the line of battle been out when the *Defiance* wore, she could have done it; but the *Defiance* stood after Sir Robert Harland, and was very much to windward.

What time did you rejoin the division of the Vice-Admiral of the Blue in the afternoon?—I edged down to him when the Red division bore away, and stretched to get a-head of the centre.

How was the Vice-Admiral of the Blue situated with respect to the *Victory*, when the Red division passed a-head?—To the best of my judgment, the Red division passed between the centre and the Vice of the Blue; and I think the *Victory* had her head to the southward at no great distance.

President. Did you, on the 27th of July, see any part of the British fleet run away from the French fleet, or see any appearance that could be so construed?—No.

Did you see on any part of that day the French fleet run away from the British fleet, or shew any appearance that could be so construed?—On the 28th, they avoided and fled from the British fleet.

Admiral Montague. The evidence that Capt. Goodall has given, has pleased me more than that of any witness that has preceded him; but as he refused to answer a question which I put to him, because it was giving, as he says, an opinion, I beg the letter to Sir Thomas Pye may be read, that the Court and the witness may see that I have a right to enquire into every thing that relates to the charge, and ask the opinion of witnesses, since in the prosecution, the greatest part of the evidence is matter of opinion. The letter of the Admiralty to Sir Thomas Pye was then read; wherein, among other directions, the Court “are to enquire into all that is contained in the charges.”

Withdrew.

LIEUT. WALLER, of the *Formidable*, was then called.

Sir Hugh Palliser. At what distance do you judge the *Victory* and the body of the fleet were from the rear of the enemy, when the *Formidable* passed the last of the French ships, and ceased firing?—I do not recollect to have seen the *Victory* when we came out of action.

Did not the *Formidable*, at the time of passing the rear of the enemy, wear and lay her head to the enemy again?—Yes.

What time did you first take notice of the Admiral and the rest of the fleet?—I did not see him till we wore a second time, but the time of the day I cannot speak to.

What distance was the French fleet from the *Victory* then?—A mile or a mile and a half.

[The Vice-Admiral now asked a variety of questions, not tending to establish any point of the accusation, but to prove, as far as he was able, that he himself did all he could with a disabled ship to get into his station, and that he was willing to fight, although he was not able to stand. The questions were exactly the same as those put to Captain Kincer, to which we beg leave to refer.—They contain, in a few words, a narrative of the pains taken on board the *Formidable*, in knotting and splicing the rigging, to prepare her to follow the Admiral; the disabled situation in which she was found to be after the engagement, and the perfect incapacity she was in of keeping her station in the line of battle a cable's length asunder.] The evidence was concluded in the following manner:

Admiral Montague. Being quartered upon the lower deck, I beg leave to know how long it was before you came upon the fore-castle after the engagement, to see the condition of the sails and rigging? —I did not see them all.

Then you have not been speaking all this time from your own knowledge, but from hearsay?—Only from hearsay, it was the general opinion, and I have been giving mine.

Cross-Examination by Mr. Keppel.

When standing to the French, did you see the repeating frigate? —I did not attend to it.

Did you in the afternoon at any one time see the *Victory* by compass?—No.

Did you at any one time in the afternoon observe the signal for the line of battle, with the Blue flag at the mizen, on board of the *Victory* when her head was to the southward?—I did not attend to any signals on board the *Victory*.

Then I am to understand your whole attention was taken up in knotting and splicing the rigging?—That engrossed the greatest part of my attention.

Was you assisted by the men, properly and like good seamen, all that time?—I think I was.

Had they any wine or grog given them to cheer them up?—Not to my knowledge.

What time was the fore-top-sail unbent on board the *Formidable*? —I cannot charge my memory with the time.

Can you say within half an hour, an hour, an hour and an half, or two hours?—I cannot pretend to say what time.

Ordered to withdraw.

LIEUTENANT HILLS, of the *Formidable*, was then called and underwent the same examination as the former witness, and declared as well as him, after having answered every question of the prosecutor in the affirmative, respecting the distance, the situation, and the course of the *Victory*, that he neither set her to compass, observed her

her situation, saw her signals, or any thing else respecting her. He said, when Sir Hugh asked him, that the *Formidable* made sail after the *Victory*; but on the cross-examination he said, he did not see her fore-top-sail up till eight o'clock, and that she was not able to hold her station in a line of battle.

CAPTAIN SIR JOHN LOCKHART ROSS, of the *Shrewsbury*, was then called and sworn.

Sir Hugh Palliser. Do you remember the time you saw the French fleet first on the morning of the 27th?—At four o'clock, standing to the N. W.

How long did they continue upon that tack?—They began to wear about eight o'clock.

Did the van or rear wear first?—The van.

Successively in each other's wake?—They did.

How long did they continue on that tack after they had all wore?—At half past nine I lost sight of them, being squally and thick to S. W.

When they had wore, as you have described, did they appear in line of battle?—Yes.

What distance were they between you and the van of our fleet at eight o'clock?—I cannot say; at four their center seemed about eight or nine miles to windward of me.

When did they change their tack again?—At ten; when it cleared I saw them to the N. W.

Then they wore again to come to the N. W. with their larboard tacks?—They did.

Were they then in a line?—More irregular than I had seen them the preceding days.

When the French began the attack, did they edge down upon that part of the fleet where you was, and begin to fire upon you?—I cannot say, I was too attentive to my own ship.

After wearing a second time, did they attack the British fleet?—They fired two shots before their colours were hoisted.

Do you consider their wearing twice, when they might have tacked, as indicating an evasion, or courting an action?—When I lost sight of them in the squall, I told my officers, that if the squall continued, we should see them to lee-ward, as I judged, from their former conduct, they meant to push for Brest; when I saw them, there were six of them before the wind at once. I ordered the studding-sail booms to be rigged out, and to bear away two points.

As they hauled their wind to the N. W. had you kept your ship as she was, could you have fetched their van?—I never bore away.

Was your ship then considerably to windward of the rest of the division?—A-head, whether to windward I cannot say.

Did you chace by signal that morning?—At a quarter past five
O my

my signal was made to chace, we being the weathermost ship of the fleet at that time.

When the French got on the larboard tack, and fired upon you, did you think they then kept their wind?—They seemed to me to be upon a wind.

Did they seem so after they had passed you, whilst the French and British fleets were passing each other, or did the French seem to edge away?—The smoke prevented my making any correct observation, and my other engagements with my own ship prevented also my observing them.

After the Red division passed the rear of the enemy, did not you in the Shrewsbury wear and stand towards them again before any other division?—I did.

Did you then say you intended to attack the rearmost of the enemy, as soon as you could get up to her?—I do not recollect; I saw it would confuse us, and therefore wore again immediately almost.

Why did you first wear?—As there was no signal for line of battle, I sat out with intention to pursue the French; but seeing the effects were likely to be bad, wore again directly.

Did you notice the Formidable laying her head to the enemy again after she came out of action?—I did not. At half past twelve the Vice of the Red made signal to tack; we then tacked after the French, and that engrossed my attention.

When the last of our ships came out of action, how was the Vice of the Red and his division situated in respect to the rear of the enemy?—When the Red squadron tacked and stood to the N. the sternmost of the French fleet were then a-head, and on our lee-bow; we were close to the wind.

After your division tacked, did you not make sail, and draw up with the rear of the enemy?—I don't recollect.

Did the Red tack before the center division wore?—They did.

As you tacked before they wore, I suppose you were considerably nearer the enemy than the center division?—We were nearer, how much I can't say.

Can you say how far the Admiral and his division were from the enemy when they wore?—I can't really say.

SEVENTEENTH DAY, TUESDAY, *January 26.*

Continuation of the Evidence of Sir John Lockhart Ross.

Questioned by Sir Hugh Palliser.

WHAT distance did the Red division stand from the enemy before they tacked?—I cannot say.

Who first made the signal for battle, the Vice-Admiral of the Red, or the Commander in Chief?—At two P. M. the signal to engage was

was made, but I did not see the signal until I passed the line of fire of the enemy.

Has an officer commanding a division a right to make any signal to contradict the orders of a Commander in Chief, such as calling ships from chace, and so forth?—I think not.

If the Admiral, while he was standing towards the enemy, had continued the signal out, would not the Red division, from the situation they were in, have bore down and attacked the enemy?—As they were to windward, they certainly could have edged down; but the point is, how proper it would have been from the situation the fleet was then in.

Was any part of the Red division dismasted?—Not that I know of.

Was any part of the Red division otherwise disabled, to your knowledge?—The Shrewsbury was, but I cannot be a judge of what damages the others received.

Do you mean that the Shrewsbury was not fit to go into action again immediately?—In half an hour she was fit to renew the action.

I should be glad to know what were the particular damages of the Shrewsbury?—The main & fore spring-stays, main-tops, top-sail tyes, great part of the running-rigging, and most of the sails shot through, one shot through the main-mast, one shot through the rudder-head, one shot through the main piece of the rudder, and several others.

From the very brisk fire kept up by the British fleet, have you not reason to believe the French suffered in proportion to ours?—I should imagine so.

Admiral Arbuthnot. Did the enemy appear to be as much damaged in their sails and rigging as our ships?—I thought not.

Did you observe the enemy when they began to form the line with their heads to the southward towards the British fleet?—I did not observe them. The French fleet wore some time about half after three, with their heads to the southward.

If the whole of the British fleet had immediately wore after passing the rear of the enemy's line, instead of standing to a distance, might not the engagement have been immediately renewed, and the enemy prevented from forming a new line, without having any regard to the condition of the fleet?—This is no question. I am called here to answer questions, but this is merely a matter of opinion. I think it must depend much on the condition of the ships.

President. Sir John, I beg leave to tell you that you may give opinion or not, as you please, that indulgence is granted by the Court.

Admiral Arbuthnot. I think, Sir John, you said yesterday you wore and stood to the French fleet, in order to renew the action immediately after you had passed the rear of the enemy, but you almost instantly judged it proper to wear back again, because you saw it would have thrown the fleet into confusion?—I did.

Admiral Montague. As most of the questions that are asked here are suppositions and opinions, I beg to ask your opinion if the British

tish fleet, after having come out of the action, had received little or no damage, whether or not the Commander, Admiral Keppel, would not have immediately renewed the action?—Most certainly he would.

Sir Hugh Palliser. When Sir John says that the ships would have been thrown into confusion by the wear of the Shrewsbury, does he mean he would have thrown the ships of his own division into confusion?—No; I mean, that if the ships which had come out of action had wore and doubled upon the enemy, they would have thrown themselves, and those coming up out of the action, into the utmost confusion.

When ships in the van tack before ships that are astern of them, do not the leading ships weather those who are a-stern of them?—They generally do; but the case before us is a particular exception to the general rule. Two or three things must be considered. The leading ships could not take the wind while the French fleet were a-stern, and part of the English ships also, without throwing the whole into the utmost confusion, and firing through one another.

Admiral Montague. Supposing our van had wore immediately and missed stays, would not they have put the fleet into the greatest confusion?—They certainly would.

Admiral Montague. I ask you this merely for your opinion, Sir John, for the present prosecution is merely like an examination for a Lieutenant.

Sir Hugh Palliser. Did the Red division bear down into the Admiral's wake that afternoon, when the signal for the line of battle was flying, and the fleet on the starboard tack?—At twenty minutes past three the Admiral made a signal to wear; at half past three the Admiral made a signal to bear down into his wake, the French having, a few minutes before that, wore with their heads to the southward, forming a line of battle. The Admiral made the signal for forming the line of battle a-head a cable's length astunder, which was obeyed by the Red division.

Did not the Red division first go down a-stern of the Admiral?—The Vice-Admiral of the Red led the fleet upon that tack, and which I heard afterwards was in consequence of orders from the Admiral.

[Admiral Keppel here said, that though Sir John had not said that he knew this circumstance from his own knowledgs, he would himself bring proof of it.]

During the night of the 27th, were any observations made in the Shrewsbury upon the French fleet?—During the whole night we were under very easy sail, in a line of battle a cable's length a-stern of Sir Robert Harland, the French fleet being to leeward of us.

Did you observe the French make any signals during that night? I observed none myself, but was told about eleven o'clock that there were some rockets thrown, though I was on deck the whole night.

Was it observed on board the Shrewsbury when they bore away?—No.

Do you remember when you lost sight of them in the night?—I do not.

How many of them were in sight next morning?—At four o'clock I saw three sail of them five or six miles to leeward, standing to the S. E. bearing away with all the sails they could croud.

Were no more of the fleet seen?—At five o'clock one of the Lieutenants at the main-mast-head saw nine or ten sail, six or seven leagues to the S. E.

Was any signal made to the Admiral by your ship of seeing these ships?—The Shrewsbury made none, because I saw the Admiral had made signal for several ships to chase them.

Did any other of the Red division make that signal?—I did not observe any, but part of the division and the Admiral had set their top-gallant-sails and bore away.

Admiral Montague. Did you see the British fleet run away, or shew any appearance of flight, or did you see any other circumstance that could give the French a pretence of claiming the victory; or that they pursued the British fleet and offered it battle?—Most assuredly at no period of time did the British fleet have the least appearance of running away.

Then, Sir, did you see the honour of the British navy tarnished on the 27th or 28th of July?—I did not, in any respect.

In the morning of the 28th, when you found the French fleet were gone, did you not look upon it they ran away from the British fleet?—Certainly, I did.

Cross-Examination by Admiral Keppel.

Admiral Keppel. Could the ships on coming out of action, in the close order they were in, tack clear of each other till they stood on to increase their distance?—*It was absolutely necessary to stand on and increase the distance.*

Was it by means of the Red division having stood on that they were able to stand to windward of the French fleet?—Most certainly it was.

I beg to ask Sir John Ross, if I used every means as an officer to come up with the French fleet from the 24th to the 27th of July?—You did, by carrying proper sail by night and day.

If I had pursued the French in a line of battle, would it have been possible to have preserved our nearness to them?—It would not.

Was it not in their power, every day from the 23d, to have brought on an action with the British fleet?—Certainly, they being always to windward.

If I had formed a line of battle in the morning of the 27th, could I have brought the French to action that day?—No, because if you had formed the line, and the weathermost ships had bore down into the wake of those to leeward, you would have been five leagues to leeward of the French fleet.

At

At eleven o'clock, when the French were so near to us, and when the wind changed favourable to the English, must not the French Admiral have given up some of his rearmost ships, if he had not risked battle with his center?—Most certainly.

Did it ever appear to you, Sir John Ross, that I had given over intentions of renewing the fight, if I could have formed a line in time to have done it?—*Certainly it appeared at no time; for the signal for the line of battle was out all the afternoon, and all night.*

Sir John is an officer of long experience in the service, I therefore call upon him to inform the Court of any instance, if he knows of any, wherein I negligently performed my duty on the 27th or 28th of July?—*I know of none; in every respect the Admiral discharged his duty, as far as I know, becoming a brave and gallant officer.*

Withdrew.

CAPTAIN PEYTON, of the *Cumberland*, was then called on the part of the prosecution.

Sir Hugh Palliser. When you first saw the French fleet, how were they standing?—They were then standing on the larboard tack, with their heads to the northward.

When did they take the other tack?—About eight o'clock they wore, and formed their line on the starboard tack.

After they had all wore, did they appear to be in a line?—Yes, as far as I could judge of them at that distance.

How long did they continue upon that tack?—Till about ten o'clock.

What did they do then?—They laid their heads to the northward again.

Did they tack or wear at that time?—There was a thick squall at the time, and I did not see them as I recollect.

President. Did you lose sight of them any time from your seeing them on the starboard, till they came to the larboard tack?—The squall was such that at times some of their ships were seen; they were not wholly covered.

Sir Hugh Palliser. When you saw them again on the larboard tack, did their van appear to you to keep their wind close, or to edge down to attack the British ships?—They appeared to me to keep their wind, and their headmost ships to croud all the sail they could.

By their being to windward first, and wearing and leaving large afterwards, when they might have tacked and kept their wind, and afterwards attacking the English, do you consider those motions as an indication of their intending to avoid coming to an engagement, or otherwise?—At the time they wore, I thought their intentions were different from what they had been for several days before, when we had been pursuing them; but when they tacked again and kept their wind, crouding all their sail, I then thought it was their intention to avoid coming to an engagement; and, as I observed before, they out sailed us as a fleet in a body, it was a confirmation to me

me that they thought of getting away, which they believed they could do when they pleased.

Did they continue to croud sail, or did they shorten sail, and bring down their top-sails?—It was not the foremost ships that bore down, but the fifth or sixth ship, who began firing on the Monarch, as appeared to me, and from thence began the action.

Then they edged down, and attacked us by firing on the Monarch?—Yes.

Did they continue to range along the English line with a croud of sail, or did they shorten sail?—After the firing began, which was very unexpected to me, from what I saw of their ships, some of them brought to to fight, and others continued under sail, but with no appearance of crouding sail after the engagement began.

Was the signal for engaging made first on board the Queen or the Victory?—I do not know.

While the Red division was engaged, were you a-head or a-stern of the Queen?—I was on her weather-bow.

Was you obstructed in your fire by any ships coming in the way?—The Monarch was before the Cumberland's weather-beam, but the enemy came under her stern, and we fired as they presented themselves.

When the Red division tacked, did they not tack up to windward of the rear of the enemy when they had passed?—They did, at least part of the ships of the Red division.

Do you know that the whole division did not tack and stand with the Admiral?—I do not know.

Did you see the Admiral and the center division when they passed the enemy's rear?—I saw the Victory as we passed her.

Did you observe the Admiral and the center division afterwards wear?—I do not recollect in particular as to time, but I believe they wore.

As the center division had wore and stood the same way as the van, was the van a-head and to windward of them?—The van for some time bore down, and I believe the center did so to.

Then at that time was your van division a-head of the center, and to windward withal?—I cannot say.

After the van had tacked or wore, did you make sail or shorten sail, or draw up to the rear of the enemy, or how?—Upon our coming up we chased the enemy, and passed them about two gun shot to windward; we then hauled our wind upon the starboard tack.

To what distance did the center division stand beyond the rear of the enemy, before they stood towards the enemy again?—I cannot judge of the distance.

To what distance did the van division stand?—To my best recollection, about two gun shot from the rear van of the enemy.

Do you remember the time the signal for battle was hauled down?—No.

From

From the situation you have described the van division to be in, about two gun-shot from the rear van of the enemy, and the center standing towards the enemy, had the signal been continued, and the body of the fleet had advanced towards the enemy, did any reason appear to you for not re-attacking the enemy?

Admiral Keppel begged leave to observe, that these were not the words of Captain Peyton. He had said that the van was within two gun shot of the enemy upon the starboard tack, and the present question supposes that he has said upon the larboard tack.

It was referred to Captain Peyton to explain his former answer, and to answer the question now put.

He begged to decline answering the question, since it was matter of opinion, and opinion was liable to error.

Did you observe the French fleet when they broke up their line of battle?—No.

[Here the President informed the Court, that he had received a note from Sir John Ross, requesting leave to explain himself in a part of his former evidence. The Court agreed to the propriety of the request, and Captain Peyton was intreated to withdraw for a few minutes. Sir John came up, and informed the Court, that his answer to a question of Admiral Keppel's, where it was stated, that the signal for the line of battle was out all night on board the Shrewsbury, he begged it might be altered, and said that the Shrewsbury kept her station all night. Admiral Montague asked him if his colours were flying all night, and he answered they were.]

Captain Peyton then returned to the bar.

Sir Hugh Palliser. Did you see the French that afternoon form their line on the starboard tack?—Yes.

Have you not reason to believe, that the French fleet suffered as much as ours?—They did not appear to have suffered so much as ours, except one ship, which appeared more disabled than any of ours.

Did you observe any ships disabled on either side?—No.

Did you observe any ship in the Red division disabled at that time? The Monarch had her fore-top-mast-yard carried away.

Did you see the Admiral when he laid his head to the southward again?—I do not remember it at present.

When did you first take notice of his being in that situation?—It strikes me that I saw him first when we were ordered to make sail a-head of him.

You have said that you observed the French to have formed a new line with their heads to the southward, was not that standing towards the British fleet?—Yes.

By the enemy's standing towards the British fleet, and forming a new line, did you think they shewed a disposition to renew the engagement, or to avoid it?—To renew it.

If the Admiral with the centre, and the Vice-Admiral of the Red with his division had advanced and attacked the enemy, would it not have prevented the enemy forming a new line?—That is a matter of opinion, and I decline answering all matters of opinion.

Did the Red division bear down into the Admiral's wake that afternoon?—The Red division bore down by signal, passed the Admiral, and took their station a-head of him on the starboard tack.

Do you remember any notice being taken of the French fleet that night?—Their lights were seen, and they fired some rockets at eleven o'clock.

Did you perceive them bear away in the night?—No.

How many were in fight in the morning from the Cumberland?—Three.

Do you remember any signal being made of any more being seen?—I believe the Monarch and the Queen made a signal for seeing a fleet, but I do not know what particular signal it was positively.

Sir Hugh Palliser. Were those three ships chased?—Yes, some little time, I cannot say how long.

What sort of wind and weather?—Moderate, and I think the wind to the N. of the W.

With little wind, and moderate weather, do you consider Ushant as a lee-shore, dangerous to approach, being summer time, and short nights?—The question answers itself. In moderate weather there can be no danger.

Admiral Montague. I do not ask this as a matter of opinion, as you say you will not answer in matters of opinion; but I ask you whether you saw the British fleet run away from the French fleet, or have the appearance of flight? Or did you see the French offer it battle, so as to give the French a pretence to claim the Victory?—Here are too many questions in one.

Did you see the British fleet run away?—No.

Sir Hugh Palliser. They are not words of the charge.

Admiral Montague. I think the charge says, "the French said the English run away."

Admiral Keppel. The prosecutor has fifty times asked whether the Victory did not *stand away with much sail*, that is, tantamount, the same thing.

Admiral Montague. Did you see the British fleet have the appearance of a flight?—No.

Did you see the French Admiral pursue the British fleet, and offer it battle?—The French Admiral did follow it, and offer battle.

Did you see the honour of the British navy tarnished on the 27th or 28th of July?—No, by no means in the world.

As you saw the French offer us battle, did you see the French fleet on the morning of the 28th, or were they not run away?—I did not see them, they were run away.

From the situation you have described the van division to be in, about two gun-shot from the rear van of the enemy, and the center standing towards the enemy, had the signal been continued, and the body of the fleet had advanced towards the enemy, did any reason appear to you for not re-attacking the enemy?

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By the enemy's standing towards the British fleet, and forming a new line, did you think they shewed a disposition to renew the engagement, or to avoid it?—To renew it.

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P

Admiral

Admiral Roddam. As you say they offered us battle when they formed upon the starboard tack, if they had intended that, would they not have fetched within pistol shot of the British fleet?—I cannot say how near they would fetch, I wish to explain what I mean by offering battle, they ranged to leeward of the British fleet, at such a distance together, as to give the British an opportunity of attacking, if they thought proper.

Please to give some account of the damages of your ship?—One shot through the bow-sprit, the rigging and sails were terribly cut.

Cross-Examination by Admiral Keppel.

I would ask you whether, at the time you have described the French fleet to have offered the English battle, the English Admiral had been able to form his line of battle?—The line was not formed till late in the afternoon.

Had not the signal been flying the whole afternoon for the line?—Yes, from two o'clock.

Did it ever appear to you that I had given over my intentions of renewing the battle, if I could have formed my line in time to have done it?—I could not judge of the Admiral's intentions; but from the dispositions and the movements of the fleet it appeared he endeavoured to form the line as well as the disabled ships would permit.

I ask you whether I used every means, as an officer, to come up with and engage the French, from the 24th to the 27th of July?—If the Admiral means that I saw he did not use every endeavour, I answer, *No*; but I cannot answer for what I did not see.

Was it not in the power of the French every one of the preceding days, to have brought on an action with the British fleet?—After the 23d, they certainly could have chose their time, as they were to windward.

After they had wore and formed their line on the starboard tack between eight and nine in the morning of the 27th, did they not keep their wind, and stand with their usual press of sail?—After they had come to the starboard tack they stood large.

When the Vice-Admiral of the Red tacked, after having passed the rear of the enemy, how many ships had he with him?—I believe all; the *Monarch* I think stood on, and she was the most disabled.

Was the Duke there?—I cannot tell, I did not see her.

Do you remember when you cheered the Admiral on the larboard tack?—It was between one and two o'clock.

Had the Admiral the signal for wearing up at that time?—I am not positive; I think not; but I have not any note of it in my minutes at all.

Was the fleet then standing to the southward, when the French were two gun shot off?—We were just going to the other tack.

Where was the Vice-Admiral of the Blue at this time, and his division?—I cannot justly recollect where he was at this time.

When

When the French first formed their line of battle on the starboard tack, if they had set good sail, might they not presently have come up with the English rear, and did they not come up under their top-sails?—They undoubtedly might, by pressing sail, have come up with our rear, and some of them under stay-sails.

With crippled ships that had been in action, is it safe to go down to a lee-shore, or an enemy's coast, trusting to find good weather when you got there, or rather can crippled ships go in with any land?—I beg leave to decline answering any question of opinion. In this instance I had no idea of a lee-shore.

How far was you, on the 28th, from the land of Ushant?—I cannot tell.

If you had come up with the French, was not there danger from the crippled ships on a lee-shore?—In that weather undoubtedly there was.

During the time the French fleet offered you battle, were the British fleet in a condition and situation to engage them?—Many ships were dispersed, and could not come into action, owing to their disabled state.

Admiral Montague. Should you have hesitated one moment to go down to engage the French as commander of a squadron of British ships, the French being then to windward, if you could have changed places with them?—If the two fleets could be brought down to engage, I should have thought it my duty to give them battle.

EIGHTEENTH DAY, WEDNESDAY, Jan. 27.

AT ten o'clock the Court was resumed, and CAPT. GOODALL, of the *Proserpine* frigate, was called.

Sir Hugh Palliser asked him some questions respecting his being stationed on the 23d of July to observe the motions of the French fleet.

Admiral Keppel, that the Court might not be troubled with a number of questions foreign to the accusation, informed the Court, that the French fleet might have gone into the port of Brest, on the 23d of July, and this being the fact which the prosecutor meant to establish, he proceeded in his evidence.

Did you receive any orders from the Admiral, and what were they?—To desire *Sir Robert Harland* to continue on the same tack.

What was the next?—To form a-stern of the *Victory*; and both orders were given nearly at the same time, and the last was put in execution.

Had you any other orders from the Admiral that afternoon?—No.

What time was it that you delivered that message?—About three o'clock.

Where was the Red division at that time with respect to the enemy's fleet?—A few of them were to windward.

What did they do in consequence of that message?—They were bearing down when I hailed Sir Robert Harland.

And did they bear down in consequence of that message, and form?—I think they did.

Was that the station of the Vice-Admiral of the Red, or of the Vice-Admiral of the Blue?—Of the Vice of the Blue.

[Admiral Keppel begged leave to explain the orders more clearly to Captain Sutton.]

Did I not first give orders to you to desire Sir Robert Harland to lead a-head on the larboard tack?—Yes.

Was not I then on the larboard tack?—Yes.

But before you went away, did I not change to the other tack, and in consequence of that give you the second order?—Yes.

CONSTANTINE JOHN LORD MULGRAVE, one of the Lords of the Admiralty, and Captain of the *Courageaux*, was then called.

When did you first see the French fleet in the morning of the 27th of July?—I do not recollect the time.

Which way were they standing when you first saw them?—I do not recollect, my attention was chiefly taken up with my own ship, and watching for the signals of the Admiral.

Did your Lordship, any time that morning before the action began, observe the French fleet to tack or wear?—The weather was hazy, and the French at some distance, and therefore I cannot be so accurate either in point of time or certainty, as I think it necessary to the weight of evidence. There were other ships nearer than mine.

Did you think they were in a line?—They appeared to me in a line; but when ships are at so great a distance, the weather hazy, and viewing them from different points of view, it is impossible to say how far a line may be regular or no.

With what part of the French fleet did your Lordship engage?—I really cannot be accurate as to the ship, though I can ascertain the time. The Court will believe I had enough to do to observe and wait the orders of the Admiral. I was fired upon by several of their ships before I came to the French Admiral.

Did it appear to your Lordship that the French fleet edged down upon the British as they engaged?—It did appear so, as I engaged close upon a wind, and our broadsides along each other.

Did they edge down before the action?—I was much more attentive to the motions of the Admiral in whose division I was, than to the French, because it was from him I was to take my conduct.

As I believe the *Courageaux* was engaged as close, and in some parts closer, than any other ship of the fleet, I beg to know if the French engaged under more or less sail than the British?—I hope the Court will forgive me if I refuse speaking to any thing but matter of

of fact. I do not wish to be led into any expression that indicates an opinion ; and I very much object to give an answer to what is contained in the introductory part of the question now before the Court. The French fleet appeared to me to carry a great deal of sail, some more than others, as must always be the case in a fleet.

Did you observe any of them carry more than their top-sails and fore-sail, and some with the top-sails lowered ?—I did not observe any with their top-sails lowered ; but I think I saw some of them with their main-sails, and it struck me at the time that they carried a great deal of sail.

What sail did the French Admiral carry ?—I do not know ; at the time I saw him I had not time to make observations.

Who first made the signal for engaging ?—I cannot say.

When the Victory passed the sternmost ship of the enemy's line, in what situation was you with respect to her ?—I was a-head of the Admiral, but I was too much engaged to make accurate observations.

Can you speak to the time and the distance that the Admiral stood beyond the rear of the enemy before he wore ?—I do not know the time the Admiral passed the rear of the enemy ; by the watch with which these observations were taken, it was forty minutes past twelve when I passed the rear, and at eighteen minutes past one, the Admiral made the signal to wear. It appeared to me a very short time, for I had not in the time been able to bring my ship into a condition to wear.

Do you remember what sail the Victory had set after she passed the enemy's rear ?—I do not.

You have not estimated the distance that the Victory was from the rear of the enemy when she wore ?—I cannot estimate the distance any other way than by the time. At forty minutes past twelve I left the Victory in action ; at eighteen minutes past one she made the signal to wear. What part of the time between these periods the Victory remained in action, I do not know.

Did you observe the motions and situation of the Red division ?—About one the Queen, the Cumberland, and others, passed me on the larboard tack, at least a quarter of an hour before signal was made. The Monarch was lying disabled with her fore-top-sail-yard down to leeward of me.

Did you observe the Red division when they shortened sail ?—I did not, I never took notice of them till they passed me in the evening to take their station in the line.

Did you observe when the signal for engaging was hauled down ?—I did, at forty-one minutes past one.

On what tack was the Admiral when the signal for engaging was hauled down ?—Upon the larboard tack.

Was it observed by you when the French fleet broke up their line, and began to stand to the southward ?—I cannot answer that question : I know nothing of their breaking up the line. I did see some of their ships standing to the southward.

What

What time did you observe them with their heads to the southward?—At 25 minutes past two, when I hauled my wind, and set my sails on the larboard tack.

From the brisk fire that was kept up during the engagement on the part of our ships, do you not think the French suffered in proportion to ours?—I desire not to answer any questions of conjecture or opinion.

Did you see any of our ships dismasted?—I saw the Foudroyant's mizen-top-mast gone.

Your Lordship has stated that at 25 minutes past two the French fleet were standing after the English fleet?—I did not say the French fleet stood after the English fleet, I said I saw some of the French ships standing to the southward, and I conceived that they stood towards our disabled ships.

What were the disabled ships?—The Egmont, Ramillies, Robuste, and Sandwich.

Then at this time the Admiral, and the Vice of the Red, were standing on the larboard tack towards the enemy?—I did not see the Vice of the Red, the Admiral was.

Whilst the French fleet or part of them were standing to the southward, and the English fleet to the north, were they standing towards each other?—The English fleet was on the windward, and the French bearing towards our disabled ships: I am accurate in this, because I was in pain for the four disabled ships, and had not the signal for the line been flying, I would have joined them.

From the situation you have described the two fleets to be in, did the English wear and stand the contrary way, or the French?—At ten minutes past two the Admiral made the signal to change to the starboard tack.

Did the fleets form a new line of battle that afternoon?—The Admiral with the ships with him did, and the French also.

Did you take notice of the Red division coming into the Admiral's wake that afternoon?—I did not.

When you did get into your station, what observations did you make on the French fleet then?—I tacked in my station at half past five; part of the French ships appeared forming their line from three cables length to half a mile asunder. The English Admiral was forming his line within a cable's length asunder.

At the time the English were on the larboard tack, did you see any of the French ships fire at a ship left a-stern, then, or at any part of the afternoon?—I did not.

Did you take notice what sail the Admiral carried that afternoon? I did not.

In the night of the 27th, did you observe any signals in the French fleet?—Not so accurately as to make a minute of it; we saw some rockets thrown between ten and eleven.

[Admiral Arbuthnot was here overcome by the confined air of the

the court, and dropped back in his chair. After having retired for a few minutes he recovered, and the Court was resumed.]

Did you see the French fleet bear away?—No.

What ships did you see next morning?—I saw three strange ships, and I saw the signal made for a fleet by two of our own ships, the *Monarch* and the *Queen*.

Did you suppose the three ships to be ships of war or line of battle ships?—I formed no judgment about them. They had no colours, and as the ship I commanded was not in a condition to be liable for having her signal thrown out to chace, I cannot say I observed how far they were off, or what course they steered.

Do you recollect how the wind was that morning?—I think it was west, and moderate weather, rather hazy; there was a swell.

Can you speak of the latitude of reckoning that day?—The 28th at noon, the latitude was 48, 16. Ushant bore N. Distance 74 miles.

Was Ushant at that time as the wind and weather was, a dangerous sea-shore?—It is matter of opinion, and depends upon pilotage, or a knowledge of the coast, which the court are better judges of than myself.

Admiral Montague. To your knowledge or observation, did you see Admiral Keppel negligently perform the duty imposed on him, either on the 27th or 28th of July?—I have given my oath to speak the truth to all facts that came within my knowledge. The opinion of an individual is liable to error, and at the same time sacred. The Court are bound by an oath not to divulge the secrets of each other, and I hope they will extend the same protection to me. I might give an opinion to day, which, upon more mature deliberation, or on future information, I might alter to-morrow. I have, therefore, kept my opinion in this case to myself, and have denied it to my most intimate friends. The Court are to judge of my evidence, not I.

Admiral Montague. I fancy your Lordship mistakes my question; I ask you no opinion, I will ask no witness for his opinion, but I conceive that all witnesses that come here are sworn to tell the truth, the whole truth, and nothing but the truth, so help them God. I therefore ask you from your particular knowledge, if you saw the Admiral in any one instance negligently perform the duty imposed upon him?—I perfectly understood the question if I understand the language. It imports me much when I answer upon oath, that I judge from my own understanding not others; negligence implies a crime. I must be equal in duty to the Admiral that commanded on that day, before I can judge of the criminality of his conduct. I conceive myself to be in a very disagreeable situation, if I am forced to give my opinion at the request of an individual member of the court, and I must beg for the sense of the Court upon the occasion. I shall consider myself as an injured man, if the Court presses me to deliver my opinion, and the court must deliberate seriously and solemnly, before they enjoin me to say, whether I think Admiral Keppel's conduct was meritorious or not; they must think of the oath that they have taken, and they must think whether they are to be dictated

to

to by one member. I shall consider myself, as I said, an injured man, if I am forced to speak ; and conclude, that the Court are not trying Admiral Keppel,; but me : they must deliberate very seriously on a point and in a trial of so much importance. I do this from a sense of the oath I have taken. It has happened to me, in the course of my service under that Admiral, to have disapproved of steps which I have afterwards been convinced were right, and felt that I was wrong.

Admiral Montague. My Lord, the language you have held this day, when it goes abroad into the world, will no doubt appear strange?—I must stop the Admiral before he proceeds any farther. If I am to be censured, I conceive the censure must come from the whole court, and not from an individual member of it.

Admiral Montague. My Lord, I must tell you, that your language is a censure upon this court, and of such a sort, that though I have been a seaman six and forty years, and a Captain and Admiral upwards of thirty years, in which time I have attended many Courts Martial, I never yet heard any equal to it, or any witness presume so much ; nor is there, I will be bold to say, a Court of Law in the kingdom where such disrespect would have been permitted?—Sir, I have treated the Court with no disrespect ; but I conceive it to be the usage of the service, if a witness is to be censured, that he be so by the whole Court, and not by an individual. I confess I do not understand this new mode.

Admiral Montague. New mode ! the whole trial is a new mode, unprecedented and strange to the last degree ; but I must move the Court to retire on this question. Such language and such treatment is not to be borne.

Admiral Arbuthnot. I confess I totally disapprove, and must condemn, the language of the witness ; I think it exceedingly disrespectful ; I think, at the same time, that every member has a right to make questions ; but how far to make questions of opinion, must be decided by the Court.

Lord Mulgrave. I am sorry to see any individual warm against me : I am cool : I have not wished to offend, neither am I conscious that I have offended when I begged the Court would consider their oath, I did it out of respect, not with any disrespect.

The Court then retired, and after staying out about an hour, the President, upon their return, addressed Lord Mulgrave in the following manner : “ My Lord, the Court have come to a resolution, “ which the Judge-Advocate will read to you.”

Judge-Advocate. “ My Lord, I am directed by the Court to observe to your Lordship, that in the course of the reasons you have thought fit to use in your declining an answer to the question put you by one of the members of the Court, with the approbation of the Court, you have made use of improper language, and that too with a warmth unbecoming the Court to receive. Your treatment of them is such, as they cannot pass over without observing to your Lordship their sense of the impropriety of it ; and it is their pleasure, that I acquaint your Lordship of their disapprobation of your Lordship’s behaviour to them.”

Lord Mulgrave. I am sorry the Court has misunderstood me, I did not wish to give offence.

The Court immediately adjourned.

NINETEENTH DAY, THURSDAY, *January 28.*

THE Right Hon. LORD MULGRAVE called in. His Lordship gave an account of the defects of the ship which he commanded. [Withdrew.]

Sir Hugh Palliser. Mr. President, I shall beg leave to call Lord Sandwich to prove such letters as his Lordship may have received from Admiral Keppel, relative to the engagement: I should not have adopted this mode of proof, had not the Honourable Admiral first set me the precedent, by calling several letters of mine to his Lordship and the Admiralty Board, and if the Admiral has no objection, I shall call for several private letters of the Admiral's relating to the engagement.

Admiral Keppel. Mr. President, so far from objecting to what the Vice-Admiral has proposed, there is not, I will assure you, a single transaction of my life that I do not wish to have made public.—Court withdrew.

On their return, the Judge-Advocate read as follows: The Court have come to the following resolution: That this Court cannot take cognizance of any private letters as evidence.

Sir Hugh Palliser. Mr. President, I shall now call Lord Sandwich to exhibit those letters, likewise some letters of mine; but at the same time I beg leave to be understood; I shall not press for the reading of them if the Honourable Admiral objects to it: what I mean is, to save his Lordship the trouble of attending twice.

Admiral Keppel. Mr. President, if I should find it necessary to call on the Earl of Sandwich, or any of the Admiralty, for the letters of the Vice-Admiral of the Blue, relative to the 27th or 28th of July, I will take care to give them due notice. I have no objection to letters being produced; the prosecutor has a right to produce my letters as evidence against me, but I shall object to the letters of the Vice-Admiral being read, as it belongs to me, and me alone, to make evidence of his letters, and to call or not to call for them as I chuse.

Earl of Sandwich. It appears to me the same as it does to the Court, that private letters are not proper to produce as evidence, and as I can be called for no other purpose than producing those letters, I imagine the Court have no further occasion for my attendance. The letters I received are, in my opinion, in some parts improper to be read in public, not that I mean in any respect to the transactions of the 27th or 28th of July; but as they contain reasons upon particular subjects, such as the state of the navy, and the conduct of particular officers, &c. [Withdrew.]

LORD LONGFORD, Captain of the *America*, was then called on the part of the prosecution. The evidence he gave respecting the first appearance and motions of the French fleet on the morning of the 27th, were exactly similar to what has been again and again repeated by other witnesses.

Sir Hugh Palliser. If the ships of the Blue division had been permitted to remain together, might they not have gone into action in a body, together with their own flag, and engaged with their own flag, as the other divisions did?—If the wind had continued as it was when the signal was made to chace, and the signal had not been made to chace, I do not think that the Blue division could have come into action at all.

Under the circumstances you have mentioned, do you think the center division would have come into action at all?—I do not know; but they certainly would have come in before the rear division, because they were considerably to windward.

As your Lordship has answered questions of opinion, I would ask you, whether if the signal for chasing had been made for all the Blue division instead of part, would it not have had the same effect?—I think it would, if the division had been all together.

How was the *America* situated with respect to the *Victory*, at the latter part of the engagement?—Very soon after I passed the rear of the enemy, I passed the *Victory*, who was standing on the larboard tack towards the enemy. I did not see her while in action.

[The prosecutor again proceeded to ask the witness the same questions as usual, with respect to the wearing, tacking, and motions of the two fleets in the afternoon. His Lordship answered much in the same manner as every other witness; and the prosecutor drew the usual question of opinion from the facts adduced.]

Sir Hugh Palliser. When the French formed a new line with their head to the southward, did it shew an intention to avoid or to renew the engagement?—If they intended to renew the engagement, they might have fetched in their shot of the British fleet; they shewed a disposition to *withstand* an attack, but not to *engage*.

Did you observe the enemy fire at one of our ships that was left a-stern?—I did not see it.

How many of the French fleet were in sight the next morning?—I think three sail, but I was so far from them, I could not discover whether they were line of battle ships or not.

Cross-questioned by Admiral Keppel.

Do you recollect when you made sail in the morning of the 27th, what sail the Vice-Admiral of the Blue was under?—I do not know what sail he was under; I was under my double-reefed top-sails and fore-sail.

When the signal was made for the six ships of the Vice-Admiral of the Blue to chace, did they set all the sail they could?—I did not observe.

I beg

I beg of you, my Lord, to state to the Court any instance wherein I negligently performed my duty either on the 27th or 28th of July ?
—*I can state no such instance to the Court, for I know of none.*

Withdrew amidst the acclamations of the audience.

ROBERT CHRISTIAN, Master of the *Ramillies*, was next called.

Sir Hugh Palliser. Give an account of the latitude and bearings, and distances of Ushant on the 28th of July ?—Lat. 48. 26. Bearings, N. 86, distance 52 leagues.

Court. How comes it there are two leaves *torn out* of your log-book between the 26th and 27th of July ?—There never was to my knowledge; they might have been cut out by some of the young gentlemen of the ship, but the two leaves never had any thing on them.

Admiral Montague. It may not be criminal, but it has a bad look just at so critical a period.

Sir Hugh Palliser. How was the wind on the 28th in the morning ?—On the western angle.

What weather was it ?—Moderate.

Then, Sir, did you consider Ushant a dangerous lee-shore with that wind and weather ?—No.

Court. Would you have ventured on that shore with crippled ships ?—Not too near.

Sir Hugh Palliser. Have you been used to cruise off Brest and Ushant ?—Yes, last war.

Then do you think there was imminent danger in the middle of summer of chasing ships somewhat within Ushant and off Brest harbour ?—No.

How much did the wind shift on the morning of the 27th, between the hours of six and ten ?—

[Admiral Keppel was going to stop the question, but directly checked himself, and said, Sir, I beg your pardon, which is the first time I ever did in my life. You have a right to ask the question.]

Witness. I cannot recollect; it is down in the log-book.

Admiral Keppel. I beg leave to object to a log-book, where leaves have been torn out on the day alluded to.

Sir Hugh Palliser. The log-book of the *Formidable*, although leaves were torn out, was read, therefore I think no exception ought to be taken to this.

Admiral Keppel. That was read on a particular occasion; but if the Court desires, I have no objection. I think my trial on a single point of wind is of so little consequence, that if it is of any service to the prosecutor, let him have it.

Sir Hugh Palliser. I have done with the witness.

Admiral Keppel. Mr. President, as I shall not condescend to put
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the measure of my conduct, as Commander of a fleet, on the opinion of a matter of a ship, I shall not ask the witness any questions.

Withdrew.

RICHARD HAY, Master of the *Shrewsbury*, called in and sworn. The log-book handed up to him.

Sir Hugh Palliser. Do you recollect the *Shrewsbury* wearing before the rest of the red division, and what was the reason of it?—I really don't know the reason.

Did you take notice at that time of the situation of the Vice of the Blue's division that remained engaged?—None but the *Formidable*.

What was the observation on her?—I saw nothing more than her being engaged.

What conversation passed on board your ship at that time?

Admiral Montague. As we have refused hearing Lord Sandwich relative to private letters, I think we cannot admit of conversation on board a ship as evidence.

After the Red division tacked, did you observe under what sails the *Victory* was when on the contrary tack?—I do not know.

How many points did the wind shift between ten o'clock that morning?—About two points and a half, or three points.

Why is part of the log-book crossed out?—The reason is, that the leaf was ruled, and when I found it would not contain the transactions of the day, I crossed it out, and copied it into the next page, permitting both accounts to stand, that the reason might be apparent; it is perfectly fair; I wrote it myself at the time.

Do you think the ships would have been able to have come into action that day, if the wind had not shifted?—They certainly could not have come into action.

Did the enemy wear or tack twice in the morning of the 27th?—They either tacked or wore twice; the last time they wore, but the first time I cannot speak to.

Then, Sir, do you think if a large fleet wears twice, would not that bring them nearer to the other?—Most certainly.

If there had been no shift of wind, would not that have brought the British fleet more up?—It would.

Had they not run a good way to the leeward, before they hauled their wind on the contrary tack?—I cannot say what distance they run to, the weather was hazy; but when it cleared up, I counted six sail of them before the wind, and, to the best of my remembrance, I mentioned in my log-book they were bearing away to Brest.

By these ships bearing away, was not that the cause of our coming so well up with them?—It was.

He said that the weather the next morning was hazy, and that in a single ship he would not have considered *Ushant* as a dangerous lee-shore, but with a fleet it was very different, especially if he

had

been under the necessity of bearing to the southward, which would have been the case, by running upon the ships to leeward next morning.

Admiral Keppel. The prosecutor has omitted asking the witness for his day's work on the 28th of July, therefore I will ask him for it. What distance was you from Ushant that day?—I had not worked the 28th: on the morning of the 27th, the distance from Ushant was 12 leagues.

Do you recollect about four days before the fleet came in sight of the enemy, a strong gale, that obliged the fleet to stand to the southward, and crippled many of the ships, the *Victory* in particular?—It did blow fresh, and, to the best of my recollection, the *Victory* had her main-yard broke. [Withdraw.]

Mr. MADDISON, master of the *Victory*, was then called, who begged leave to inform the Court, that he had omitted to put in the wearing at three o'clock on the 27th to the starboard, which he had afterwards interlined, and which he did himself, without any information, desire, or communication with any person whatever. He swore, that the log-book was made up day by day by himself, from the board, which he also kept himself, and that it was open to inspection, and was daily copied from by all the officers on board.

Copy from the Log-Book of the Victory, of the particular Remarks from the Beginning of the Action, to the losing sight of the French Fleet, July 27, 1778.

AT ten A. M. made the signal and tacked; a large body of the French fleet appeared in great confusion.

At half past eleven, the ships a-head began to engage the French ships, having fired at the van of our fleet first. Ditto; made the signal for our fleet to engage; we were now on contrary tacks with the French, they striving to fetch as far to the windward as they could, firing as they passed our ships; several of them fired at the *Victory*; but seeing we could fetch the *Bretagne*, we passed two of their ships; reserved for the Admiral's ship.

At three quarters past eleven, got along-side of the *Bretagne*, and at noon engaged *La Ville de Paris*.

At one P. M. engaging the six sail that were a-stern of the French Admiral.

At half past one made a signal, and wore, our ships greatly damaged in rigging and sails.

At two made the signal for the line of battle a-head, at one cable's distance, and brought to, to repair the rigging.

At half past two one of the French ships, who had lost her main-yard and mizen top-mast, ran away to leeward, and a frigate to attend her.

At three quarters past two the French wore, and formed the line with their heads towards us.

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At seven minutes past three, made the signal for the ships to windward to bear down into our wake, and that they might see it more distinctly, we hauled down the signal for the line of battle.

At fifty minutes past three, finding the signal for bearing down into our wake was not seen, we hauled down that, and made the signal for the line again, we now steering S. S. E. to join our ships to leeward, and form the line of battle.

At half past four repeated the signal for the ships to bear down into our wake.

At five made the signal for the ships to get into their stations in the line, and sent the Milford to desire Sir Robert Harland to make sail with his division, and form the line in the van, which he did.

The French line formed with 28 sail, and two ships of fifty or sixty guns. Employed in splicing the rigging, which is very much damaged, having lost seven main shrouds, and the major part of the top-masts and running rigging, with all the top-sails, courses, and stay-sails very much damaged. At seven made each particular ship's signal of the Vice-Admiral of the Blue's division, except the Formidable, who has not got her fore-top-sails bent, to come into their stations for the line. The French line coming up, they have thrown the ships that received the least damage into their van. The French Admiral has 14 sail of the line a-head, and 13 a-stern of him, with two 50 or 54 gun ships, four frigates, one schooner, and three brigs.

At eight o'clock, three of the French ships nearly a-breast of us to the leeward, we standing on under double-reefed top-sails and fore-sails to give Sir Hugh Palliser and his division more time to get into the line preparing to renew the engagement at day-light.

At eleven minutes past eleven, one of the headmost ships of the French fired two rockets, and soon after one false fire; and at twelve lost sight of their lights.

At four wore ship, and made the Prince George and Bienfaitant signal to chase three sail in the S. E. quarter, which were all we could see, and them we took to be French.

At nine called them in. The fleet all employed in splicing the rigging, and our carpenters employed in fishing the main and mizen-masts that were shot through.

The authenticity of these minutes from the general and original log-book being thus particularly ascertained, Sir Hugh Palliser questioned him as follows :

Sir Hugh Palliser. What alteration was there in the wind from six in the morning till ten ?—One point appears on the log-book.

What was your reckoning on the 27th and 28th of July ?—On the 27th, lat. 48. 31. N. Ushant bore S. 89 deg. East 36 leagues. On the 28th, lat. 48. 7. N. Ushant bore N. 75 deg. E. distance 27 leagues.

Are

Are these your current reckonings, or back reckonings from the land?—They are the current reckonings marked each day.

How was the wind and weather on the morning of the 28th?—The weather was squally, and the wind about W. and by N.

Did you consider Ushant as a dangerous lee-shore in summer?—With the wind and weather we then had, if we had been near it, I should have considered it a very dangerous lee-shore.

In the latitude of it would you have considered it so?—Ushant itself is but a small spot, and a single ship might clear it with the wind at W. N. W. in moderate weather.

Admiral Montague. Should you chuse, with a flag ship, and a fleet of 30 sail under your command, none of them disabled, in the afternoon of any day, to come nearer to a lee-shore than five or six leagues?—No.

Supposing you to be in the *Victory*, and that ship went two knots in an hour, and another ship that was a-stern of you went three knots, do you not suppose the ship a-stern would come up with the ship a-head?—I do.

[It may not be unnecessary to observe, that the *Victory's* log-book mentions her going, at the time she is said to have carried much sail, at the rate of two knots an hour; the *Formidable's* log-book mentions, that she (the *Formidable*) failed at that time three knots four fathom.]

Admiral Keppel. If the British fleet, after the 27th, had been caught as near Ushant, in the same manner as they had been some days before, when the *Victory* broke her main-yard, with the wind at N. W. and such a gale as it was at that time, do you not think they would have been in a very perilous situation?—With such a gale of wind as we had then, and blowing westerly, they would have been in great danger.

Was the Vice-Admiral of the Red on the weather-bow, after we stood upon the starboard tack?—I do not recollect seeing him on the weather-bow; when I took notice of him, which was just before the *Victory* wore, he was one point abaft the beam.

Was the signal made at ten o'clock for the whole fleet to tack together?—It was.

Do you recollect whether, upon some change of wind, one, two or three points, the Vice-Admiral of the Red did not come upon the lee-bow of the *Victory*?—I recollect seeing him near two points upon the wind.

Do you recollect my observing to you, and others at that time, “Look, the French fleet are now in confusion?” The Admiral altered the question, and asked the witness, if he observed whether the French ships on the lee-bow did not at that time, viz. at ten o'clock, appear in confusion?—He answered, they did.

Mr. COOPER, Master of the *Duke*, was called to prove, whether that ship had not fired into the *Foudroyant* in the action. He said she

he did not, and he declared that Ushant was a dangerous lee-shore, at a near distance, for a large fleet.

Admiral Keppel. Mr. President, I beg leave to observe to the Court, that as the master of the Victory has mentioned the addition to the log-book in that particular place, and as that is directly one of the charges the prosecutor has against me, the Court will certainly see it cannot be thought to be alledged as a crime AGAINST HIM. I shall beg leave to add a few words that I forgot to mention at the time the Earl of Sandwich was here; the Vice-Admiral said that he should not have called for letters, had I not set the precedent. Now Sir, as I have not yet opened my defence, I cannot have called for letters or evidence of any sort; the reason I mentioned to Lord Sandwich, when he was here, that I might probably call on him, was to produce the Vice-Admiral's letters to him, wherein his opinion of my conduct was directly opposite to what he has charged me with, but as the Vice-Admiral says himself, his letters contain nothing to my prejudice, it is needless, otherwise I am not afraid of any thing contained in either public or private letters.—Adjourned.

TWENTIETH DAY, FRIDAY, *January 29.*

THOMAS REID, master of the Queen, was called in.

Sir Hugh Palliser. What was the situation of the Red division with respect to the rear of the enemy, when the Admiral made the signal to wear and to stand to the southward?—About two miles to the enemy's rear.

Do you speak of the time they wore and stood from the enemy, or at a time earlier?—At the time the signal was made we might be rather neare

Was you to windward or leeward, or what position from them?—They were about a point upon our lee-bow.

Is the log-book you have delivered in the original log-book?—It is the original log-book which I kept day by day myself, and which was taken uniformly from the log-board.

Have there been any additions or alterations in the log-book now delivered?—None respecting the transactions of the 27th and 28th of July.

Did you never copy the day's works from the ship's log-book?—There is a reference, written in a different coloured ink and with a different pen, and therefore probably written at a different time: "At this time the Victory hauled down the signal for battle."

At what time was that note written?—It was written some part of the same day, though not at the same time. It was omitted in writing off the log.

I would ask you what the reason is that there is no log marked from one o'clock till five in the afternoon?—The reason is, that the courses

courses we steered in that time were too complicated to make any distinct rates.

Is it usual for ships to be five hours in action without giving rates and distances?

Admiral Montague. There is in the log-book at noon on the 27th an account, which says, courses *various*. Now it strikes me, and must every one, that it means from one to five o'clock, the courses were various, and as soon as the hurry of the battle was over, the book again goes on mentioning the courses very regularly.

Captain Duncan. Upon my honour, this is very extraordinary, and quite contrary to all rules of law and justice; we have been near an hour examining a matter, not to any one point of the charge, but apparently are trying the matter, not the prisoner; the log-book in question is very proper, and I don't see that the trial has any thing to do with the questions asked.

Sir Hugh Palliser. At what time did the *Queen* come out of the engagement?—About half past twelve o'clock.

Then is not the time the log is omitted, marking the time you came out of action?—It is, we were too busily employed after coming out of action for some time, repairing and endeavouring to form a line. Our situations were so different, we could not mark any straight course.

Are you sure there are not any marks for those hours in the original rough log-book?—There are not, I am certain.

What is the reason that there is a leaf, including the transactions of the 24th, cut out?—The book was left out, and that leaf was blotted, I therefore cut it out that the book might be fair and clean, as it was shewn to the Vice-Admiral every day.

How much did the wind shift from six till ten in the morning of the 27th?—Two points.

Give an account of the latitude, bearings, and distance of Ushant on the 27th?—Twenty-seventh at noon, lat. 48. 36. N. Ushant, S. 86. E. 28 leagues distance. 28th, lat. 48, S. Ushant N. 74 E. distance 26 leagues.

In the morning of the 28th, what part of the French fleet was seen from the *Queen*?—Three sail.

Were no other ships seen supposed to be the French fleet?—None that I saw or heard of.

Was not a signal made on board the *Queen* of seeing a fleet?—Not to my knowledge.

How was the wind and weather on the morning of the 28th?—Wind W. and moderate weather.

Was it such that you could not chase a flying beaten enemy, on apprehension that Ushant was a dangerous lee-shore?—Ships might chase that were not disabled, without considering Ushant as a dangerous lee-shore.

Were any part of the fleet dismasted?—Not that I know of; many appeared very much crippled.

Was that appearance in sails and rigging only, or did it appear in their masts?—It appeared by fishing the masts, many of the top-sails being in the caps.

What situation must a ship be in, and what weather, to make Ushant a dangerous lee-shore?—When they are prevented carrying sail, owing to a variety of accidents, or blowing hard.—[Withdrew.]

Captain Duncan. Mr. President, I must beg that we have no more examination of masters as to log-books: we have been upwards of an hour trying the master of the *Queen*, and not one point to the purpose of the trial we sit here for. The log-books were delivered in for our inspection, and if the prosecutor examines more witnesses the same as the last, I must beg the court to withdraw.

Admiral Keppel. I have no objection to the prosecutor looking into any log-books to find out any thing that way or any other to get at matter.

Sir Hugh Palliser. I only wish to remark that the *Victory's* log-book marks one knot five fathom, and then for some hours says *laying to*.

Admiral Keppel. Whenever I am put to my oath, I will with pleasure swear that I never saw or knew any thing of the *Victory's* log-book, directly or indirectly, from the day of action, until the second time of going to sea.

Sir Hugh Palliser. I don't think the Admiral did.

MASTER of the *AMERICA* was called in.

Sir Hugh Palliser. What alteration of wind was there between the hours of six and ten, on the 27th of July?—Wind shifted about four points.

Does the log-book say so?

Admiral Montague. I beg the witness, according to his oath, may speak from his knowledge, the log-book is only to refresh his memory.—The wind did shift about four points, between nine and ten o'clock.

Are the courses in your reckoning allowed for that shift of wind, or from what it is in the log-book?—The shift of wind is not mentioned in the log-book, the courses are agreeable to what the log-book does mention.

How was the wind and weather on the morning of the 28th?—Wind about west, and moderate weather.

Would you have advised not to chase a flying enemy at that time, for fear of making Ushant a lee-shore?—I should not be afraid of Ushant as a lee-shore until I was within three or four leagues of the land.

Under what circumstances must a ship be to make Ushant a lee-shore, and what kind of weather must it be?—When a ship is between
Ushant

Ushant and the Seames, and the wind at W. N. W. or W. blowing a gale of wind, she must be supposed to be in great danger.

Court. Then supposing a fleet of thirty sail, and some of them disabled, to be between Ushant and the Seames, would they be in danger supposing it moderate weather?—Not if they were three or four leagues distant, and could carry sail.

Sir Hugh Palliser. If one ship could be safe while carrying sail, would not thirty, able to carry sail, be equally safe?—I think one ship would be able to get off the land in weather that a fleet could not.

Sir Hugh Palliser. I have done.

Admiral Keppel. “As I am not one of the brethren of the Trinity-House, I shall not ask the witness any questions.”

The MASTER of the FOUDROYANT was called to prove the authenticity of the log-book, and read her days work of the 27th and 28th—27th, Lat. 48. 38. Ushant bearing East half South, distance 27 leagues; 28th, Lat. 48. 17. distance 21 leagues.

He deposed that between ten and twelve of the 27th, and not before ten, the wind shifted two points; that it blew a fresh gale, and was cloudy on the morning of the 28th, and that in the situation the Foudroyant was at that time, as a master and pilot, he would have objections to chasing, since he would have considered himself to be in danger.

The MASTER of the BERWICK called in.

Sir Hugh Palliser. I shall not ask the master any questions relative to his book; there is no occasion for any; I only wish to observe, that the day of the 28th, is written with different ink, and in a different hand, with many additions, but as they may be all very innocent ones, and I dare say, fair and true observations, I have nothing to say against them, only to point it out that there is such a circumstance?—There is nothing put down on that day, but what I did myself at twelve o'clock at noon, on the same day.

Did not some of our ships on the 27th of July, during the engagement, fire into the Berwick?—Not that I know of.

Have you not understood it was so?—I have heard so by report of some of the ship's company, but not to my own knowledge.

Were there not some men said to be killed by it?—Not to my knowledge.

Did you not receive any shot in the larboard side?—None that I saw.

Were you told of any?—No.

[Withdrew.]

Sir Hugh Palliser. “Mr. President, As I fancy the court are pretty near tired of the chapter of log-books and lee-shores, I shall not trouble them any more on the subject; but I beg leave to inform them, that the express I sent into Wales after Lieutenant Parry, who has the original minute-book, have not been able to succeed. However, I have advices from the Admiralty, that per-
“ sons

“ sons are sent to endeavour to meet him at the Nore, where he is supposed to be gone in the tender he commands ; if he can be found before the finish of this trial, I shall beg leave to introduce him or any other evidence for information of the Formidable's log-book. As to the alterations of the log-book of the Robuste, Capt. Hood on the one hand acknowledges them, and on the other, the alterations have not yet been pretended to be contrary to truth. If I can be of any service in explaining any thing I will with pleasure.”

President. We have not, Sir, expressed, that we are tired, we are ready to hear any evidence that you have to offer.

Sir Hugh Palliser. I beg that the letters of Admiral Keppel to the Admiralty of the 23d and 24th of July may be read.

Admiral Keppel. As I shall not trouble the court with any further examination concerning the Formidable's log-book, so neither shall I object to the Vice-Admiral's witnesses to that matter. On the affair of the Robuste's log-book, I shall, in the further progress of this business, take the freedom to make some observations, as well as produce evidence to shew the danger, falsehood, and mischief of such alterations.

Sir Hugh Palliser. As the Admiral has declared that he will shew the falsehood and mischief of the alterations of the Robuste's log-book, I think it is a justice due to the character of Captain Hood, that the Court will suffer him to appear, and justify himself from the attack made on him.

Admiral Keppel. I have no objection ; let the Court use its pleasure.—The Court replied, They would do every thing that justice required.

The two letters were read, which stated that the French fleet were in sight, and appeared to be full 40 sail, that the wind was favorable for them to attack our fleet if they thought proper, and that from the disposition of them and their frigates, it was not safe to reinforce (Admiral Keppel) with any single ships, as they would be in danger of being taken.

Sir Hugh Palliser. As the evidence on my part is now concluded, I beg leave, that the Judge-Advocate may read an address of mine to the Court, on the evidence that has been delivered.

Admiral Keppel. Mr. President, The evidence on the part of the prosecution being closed, I trust it is not presumption in me to declare, that I do not resist the desire of the prosecutor, to address the Court by a speech from any apprehensions of danger, but as I have never heard nor known any such attempt in court-martials, and such a precedent may be attended with bad consequences in other cases, I trust that my case, which in many instances is sufficiently new, will not be distinguished by any such innovation.

Sir Hugh Palliser. Mr. President, Considering myself not suffered to address the Court in the conclusion of my evidence for the crown, I cannot think of waving it, but must take the opinion of the court.

Admiral Keppel. Mr. President, I mean that the prosecutor has no right to make any speech on the merits of the case in any part of this cause.

The

The Court having retired a few minutes on this question, returned, and the Judge-Advocate read the resolution: "It not coming within the knowledge of any member of this Court, that it has been the usage of Courts-Martial to receive any thing from the prosecutor on the merits of his cause, when he has declared that he has closed his evidence; therefore, it is resolved, that the paper now offered to the Court by the Prosecutor cannot be admitted."

Sir Hugh Palliser. As I cannot be suffered to make a speech now, it is very material to me to know whether, AFTER the Admiral has closed his evidence, I may THEN offer an Address.

Court to Admiral Keppel. Are you ready, Sir, to go upon your defence directly.—*Admiral Keppel.* I beg leave to inform the Court, that I am ready to go upon my defence, and will with their permission, begin it to-morrow morning.

[Here an altercation ensued, between Sir Hugh Palliser, Admiral Keppel, and the Court, about the propriety or impropriety of speeches, which was stopped by Admiral Montague, who rose, and said, That after the resolve the Court had come to, he did not conceive that a single word ought to be said; that whenever the evidence for the prisoner was closed, it would then be a proper time to debate and determine whether the prosecutor might make a speech upon the evidence delivered on both sides: That when that period came he would, with pleasure, hear both sides, and determine upon the merits of the case, according to the best of his judgment, and the oath he had taken; he should therefore move, that all the conversation that had passed between the prosecutor and the prisoner after the resolution of Court, not to hear any speech now, be erased from the minutes, which being done, the Court adjourned.]

TWENTY-FIRST DAY, SATURDAY, Jan. 30.

AT half past ten o'clock the Court was resumed, and ADMIRAL KEPPEL made the following speech.

The DEFENCE of ADMIRAL KEPPEL.

"S I R,

"AFTER forty years spent in the service of my country, little did I think of being brought to a Court-Martial to answer to charges of *misconduct*, negligence in the performance of duty, and tarnishing the honour of the British navy. These charges, Sir, have been advanced by my accuser. Whether he has succeeded in proving them, or not, the Court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not by a deceptious shew of kindness to lead me into the mistake of supposing a *friend* in the man who was my *enemy* in his heart, and was shortly to be my *accuser*. Yet, Sir, after all my misconduct; after so much negligence in the performance of duty, and after tarnishing

so deeply the honor of the British navy, my accuser made no scruple to sail a second time with the man who had been the betrayer of his country ! Nay, during the time we were on shore, he corresponded with me on terms of friendship, and even in his letters he approved of what had been done, of the part which he now condemns, and of the very negligent misconduct, which has since been so offensive in his eyes !

Such behaviour, Sir, on the part of my accuser, gave me little reason to apprehend an accusation from him. Nor had I any reason to suppose that the State would criminate me. When I returned, his Majesty received me with the greatest applause. Even the *First Lord of the Admiralty* gave his flattering testimony to the rectitude of my conduct, and seemed with vast sincerity to applaud my zeal for the service. Yet in the moment of approbation, it seems as if a scheme was concerting against my life ; for without any previous notice, *five* articles of a charge were exhibited against me by Sir Hugh Palliser, who, most unfortunately for his cause, lay himself under an imputation for *disobedience of orders* at the very time when he accused me of negligence ! This to be sure was a very ingenious mode of getting the start of me. An accusation, exhibited against a Commander in Chief, might draw off the public attention from neglect of duty in an inferior officer. I could almost wish in pity to my accuser, that appearances were not so strong against him. Before the trial commenced, I actually thought that my accuser might have some tolerable reasons for his conduct. But from the evidence, even as adduced, to account for the behaviour of the honourable gentleman in the afternoon of the 27th of July, from that evidence I say, Sir, I find that I was mistaken. The trial has left my accuser without excuse, and he now cuts that sort of figure, which, I trust in God ! all accusers of innocence will ever exhibit.

I have observed, Sir, that the opinions of officers of different ranks have been taken. I trust that the Court will indulge me with that liberty, in the evidence for my defence. Some have refused to give their opinions. I thought it strange, as plain speaking, and a full declaration, are the best of evidences in a good cause.

I would wish, Sir, the Court to consider, that in all great naval, as well as military operations, unless the *design* be fully known, the several manœuvres may have a strange appearance. *Masters* have been called to give their opinions on the higher departments of command. Higher authorities should have been taken. Such authorities are not scarce, for I am happy to say, there never was a country served by naval officers of more bravery, skill, and gallantry, than England can boast at present. As to this Court, I entreat you, gentlemen, who compose it, to recollect, that you sit here as a *Court of Honor*, as well as a *Court of Justice*, and I now stand before you, not merely to save my life, but for a purpose of infinitely greater moment—To clear my fame.

My accuser, Sir, has been not a little mistaken in *his* notions of the duty of a Commander in Chief, or he would never have accused me in the manner he has done. During action subordinate officers
either

either are, (or the ought to be) too attentive to their own duty to observe the manœuvres of others. In general engagements it is scarcely possible for the same objects to appear in the same point of view to the Commanders of two different ships. The point of sight may be different. Clouds of smoke may obstruct the view. Hence will arise the difference in the opinions of officers as to this or that manœuvre, without any intentional partiality. Whether I have conceived objects in exact correspondence with the truth; whether I have viewed them unskilfully, (or, as my accuser has been pleased to term it, *un-officer-like*) these are matters which remain to be determined. I can only say, that what Sir Hugh Palliser has imputed to me as *negligence*, was the effect of *deliberation* and *choice*. I will add, that I was not confined in my powers when I failed; I had ample discretion to act as I thought proper for the defence of the kingdom. I manœuvred; I fought; I returned; I did my best. If my abilities were not equal to the task, I have the consolation to think, that I did not solicit, nor did I bargain for the command. More than two years ago, in the month of November, 1776, I received a letter from the first Lord of the Marine department, wherein he observed: "That owing to motions of foreign courts, it might be necessary to prepare a fleet of observation." My reply to this letter was: "That I was ready to receive any command *from his Majesty*; and I begged to have the honour of an audience." This request was complied with. I was closeted, and I told the King, that "I was willing to serve him as long as my health would permit." I heard no more until the month of March 1778, at which time I had two or three audiences, and I told his Majesty, That "I had no acquaintance with his ministers, but I trusted to his protection and zeal for the public good." Here were no sinister views; no paltry gratifications; I had nothing, I felt nothing, but an earnest desire to serve my country. I even accepted the command in chief with reluctance. I was apprehensive of not being supported at home. I foresaw that the higher the command, the more liable I was to be ruined in my reputation. Even my misfortunes, if I had any, might be construed into crimes. During forty years service I have not received any particular mark of favour from the crown. I have only been honoured with the confidence of my Sovereign, in times of public danger. Neither my deficiencies, nor my misconduct, were ever before brought forward to the public. And it is now somewhat strange, that so well acquainted as my accuser must have been with my *deficient* abilities, it is strange, I say, Sir, that he should be the very person who brought me the message to take the command upon me! Nay, further, Sir. He brought me that message with great seeming pleasure! there was, or there was not, reason at that time to doubt my ability. If there was reason, how could my accuser wish me to accept a command, for which I was disqualified? If there was not any reason to doubt my professional abilities sixteen months ago, I have given no reason why they should be since called in question. When I returned from the expedition, I did not complain of any thing. I endeavoured to stop all murmurings. I even trusted the *First Lord of the Admiralty* in the same manner as I would have done my most intimate friend. This might be imprudent.

dent. It might be dangerous. But, Sir, I am by nature open and unguarded, and little did I expect that traps would artfully be laid to endeavour to catch me on the authority of my own words.

It was in the month of March, 1778, that I was told a fleet lay ready for me to command. When I reached Portsmouth I saw but *six* ships ready, and on viewing even those with a seaman's eye, I was not by any means pleased with their condition. Before I quitted Portsmouth, *four* or *five* more were ready, and I will do the persons in office the justice to say, that *from that time* they used the utmost diligence in getting the fleet ready for service. On the 30th of June I sailed with *twenty* ships of the line, and very fortunately I fell in with the Belle Poule and other French frigates, and the letters and papers found on board them were of material service to the state. Captain Marshall distinguished himself with the greatest honour. I confess that when I fell in with those frigates I was at a loss how to act. On the one hand, I conceived the incident to be favourable to my country; and on the other, I was fearful that a war with France and all its consequences might be laid to my charge. For any thing I can tell this may yet be the case. It may be treasured up to furnish another matter for future accusation. To this hour I have neither received official approbation or censure for my conduct. With *twenty* ships of the line I sailed. *Thirty two* ships of the line lay in Brest water; besides an incredible number of frigates. Was I to seek an engagement with a *superior* force? I never did, nor shall I ever fear to engage a force superior to the one I then commanded, or that I may hereafter command. But I well know what men and ship can do; and if the fleet I commanded had been destroyed, we must have left the French masters of the sea. To resist a fleet requires time. From the situation of affairs naval stores are not very soon supplied. Never did I experience so deep a melancholy as when I found myself forced to turn my back on France! I quitted my station, and courage was never put to so severe a trial.

I was permitted to sail a second time, without receiving official praise or blame for the part I had acted. These were discouraging circumstances, but they did not disturb my temper. My principal object was to get ready for sea with all possible haste. I was surprised on my return to be threatened with the fate of Admiral Byng, and I was still more surprised to be charged with cowardice.

With thirty ships of the line I sailed early in July. The French Admiral sailed from Brest with thirty-two ships. I believe that when the fleets came in sight of each other, the French were not a little surprised to see me so strong. I desire not to throw the slightest imputation on the courage of the French Admiral. I believe him to be a brave man, and one who had some particular reasons for the line of conduct he pursued. I was determined, if possible, to bring the French to battle, as I had every reason to think, that their having avoided an engagement, when it was four days in their power to attack me, was owing to their expecting some capital reinforcements. I therefore thought, that the sooner I could engage them the better; especially as I knew that the principal fleets of our trade were daily expected in the Channel; and if the French fleet had been permitted

to disperse without an action, our East and West-India fleets might have been intercepted, and the convoys might have been cut off, and the stake of England might have been lost. I beg leave to mention, that in the reign of King William, the gallant Admiral Russel was two months in sight of a French fleet, and he could not possibly bring them to action. My being in sight of the French fleet four days before the engagement, will not, therefore, appear quite so extraordinary as it has been represented. Had it not been for the favourable change of wind on the morning of the 27th of July, I could not have brought the French to action when I did.

I am exceedingly sorry, Sir, that the Admiralty have refused me the liberty of producing my instructions. In all former Courts-Martial, the instructions and orders have been sent with the charge to the members of the Court. As it has been denied in this instance, I must and do submit.

Although on the 27th of July I fought and beat my enemy, and compelled him to take shelter by returning into port, yet the effort did by no means answer my wishes. I rushed on to re-attack the enemy. Why I did not accomplish my design, will be seen in the evidence I shall produce. I might, it is true, have chased the three ships which were visible on the morning of the 28th of July, but with very little prospect of success. I therefore chose to return to Plymouth with my shattered fleet, to get ready for sea again, not however forgetting to leave two ships of the line to cruise for the protection of our trading fleets, which, thank God! all arrived safe.

On my return, Sir, I most cautiously avoided to utter a syllable of complaint, because it might have suspended our naval operations, which at that time would have been highly dangerous. I could not think of attending a Court-Martial, when greater objects were in view.

With respect to the second edition of the Formidable's log-book, it appears to have been fabricated rather for the purpose of exculpating the prosecutor, than to criminate me. I shall therefore pass it over, and permit the gentleman to make the most of such an exculpation. I cannot, however, be so civil to the alterations and additions in the log-book of the Robuste. Captain Hood's conduct must have struck the Court, as I believe it did every person except the prosecutor, with astonishment.

A great stress, Sir, has been laid on my letter to the Admiralty. There is a passage in it where I seemed to approve the conduct of every officer in the fleet. The Court will observe, that I was not in my letter to inform all Europe, that a Vice-Admiral under my command had been guilty of neglect, whilst there remained a possibility of excuse for his conduct. As to Court-Martials, one very bad consequence will, I am sure, result from this trial: it will terrify a Commander in Chief from accepting a commission, if he should be liable to be brought to a trial by every subordinate officer.

As I have touched on my letters, I will just observe, Sir, that the most disagreeable task I ever experienced, was that of writing my letter of the 30th of July. However, if I writ ill, I am confident

that I fought well, and the desertion of the trade of France was evident from the numbers of rich captures which we made : A number far exceeding any thing ever known in so short a period ! His Majesty noticed this in a speech from the throne.

Mr. President, I now desire that the Judge-Advocate may be directed to read the charges, and I will answer the several accusations.

The Replies of Admiral Keppel to the charges against him.

The first of the charges contained in the first article, is,

“ That on the morning of the 27th of July, 1778, having a fleet of thirty ships of the line under my command, and being then in the presence of a French fleet, of the like number of ships of the line, I did not make the necessary preparations for fight.”

To this I answer, That I have never understood preparations for fight to have any other meaning, in the language and understanding of seamen, than that each particular ship, under the direction and discipline of her own officers, when in pursuit of an enemy, be in every respect cleared, and in readiness for action ; the contrary of which no Admiral of a fleet, without a reasonable cause, will presume : and as from the morning of the 24th, when the French fleet had got to the windward, to the time of the action, the British fleet was in unremitting pursuit of them ; it is still more difficult to conceive that any thing more is meant by this charge, than what is immediately after conveyed in the charge that follows it, viz. “ That on the same morning of the 27th, I did not put my fleet into line of battle, or into any order proper either for receiving or attacking an enemy of such force.”

By this second part of the charge I feel myself attacked in the exercise of that great and broad line of discretion which every officer, commanding either fleets or armies, is often obliged, both in duty and conscience, to exercise to the best of his judgment ; and which, depending on circumstances and situations, infinitely various, cannot be reduced to any positive rule of discipline or practice.—A discretion which, I submit to the Court, I was peculiarly called upon by the strongest and best motives to exercise, which I therefore did exercise, and which, in my public letter to the Board of Admiralty, I openly avowed to have exercised. I admit, that on the morning of the 27th of July, I did not put my fleet into a line of battle, because I had not it in my choice to do so, consistently with the certainty, or even the probability, of either giving, or being given battle ; and because, if I had scrupulously adhered to that order, in which, if the election had been mine, I should have chosen to have received or attacked a willing enemy, I should have had no enemy either to receive or attack.

I shall, therefore, in answer to this charge, submit to the Court my reasons for determining to bring the enemy to battle at all events ; and shall shew that any other order than that in which my fleet was conducted from my first seeing them, to the moment of the action, was incompatible with such determination.

In order to this I must call the attention of the Court to a retrospective view of the motions of the two fleets, from their first coming in sight of each other.

On my first discovering the French fleet at one o'clock in the afternoon of the 23d of July, I made the necessary signals for forming my fleet in the order of battle, which I effected towards the evening, and brought to by signal, and lay till the morning, when perceiving that the French fleet had gained the wind during the night, and carried a press sail to preserve it, I discontinued the signal for the line, and made the general signal to chase to windward, in hopes that they would join battle with me, rather than suffer two of their capital ships to be entirely separated from them, and give me a chance of cutting off a third, which had carried away her top-mast in the night, and which, but for a shift of wind, I must have taken. In this, however, I was disappointed, for they suffered two of them to go off altogether, and continued to make every use of the advantage of the Wind.

This assiduous endeavour of the French Admiral to avoid coming to action, which, from his having the wind, was always in his option, led me to believe that he expected a reinforcement. This reflection would alone have been sufficient to determine me to urge my pursuit in as collected a body as the nature of such a pursuit would admit of, without the delay of the line, and to seize the first opportunity of bringing on an engagement.

But I had other reasons no less urgent.

If by obstinately adhering to the Line of Battle, I had suffered, as I inevitably must, the French fleet to have separated from me; and if, by such separation, the English convoys from the East and West-Indies, then expected home, had been cut off, or the coast of England had been insulted, what would have been my situation! Sheltered under the forms of discipline, I might, perhaps, have escaped punishment, but I could not have escaped censure. I should neither have escaped the contempt of my fellow-citizens, nor the reproaches of my own conscience.

Moved by these important considerations, supported by the Examples of Admiral Russel, and other great commanders, who, in similar situations, had ever made strict orders give way to reasonable enterprise; and particularly encouraged by the remembrance of having myself served under that truly great officer Lord Hawke, when, rejecting all rules and forms, he grasped at Victory by an irregular attack, I determined not to lose sight of the French fleet, by being out-failed, from preserving a line of battle, but to keep my fleet as well collected as I could, and near enough to assist and act with each other, in case a change of wind, or other favourable circumstances, should enable me to force the French fleet to action.

Such were my feelings and reflections when the day broke on the morning of the 27th of July, at which time the fleet under my command were in the following position:—Vice-Admiral Sir Robert Harland was about four miles distant, on the Victory's weather-quarter, with most of the ships of his own division, and some of those

belonging to the center. Vice-Admiral Sir Hugh Palliser at about three miles distant, a point before the lee-beam of the *Victory*, with his main-sail up, which obliged the ships of his division to continue under an easy sail.

The French fleet was as much to windward, and at as great a distance, as it had been the preceding morning, standing with a fresh wind at S. W. close hauled on the larboard tack, to all appearance avoiding me with the same industry it ever had done.

At this time, therefore, I had no greater inducement to form the line, than I had the morning of the former day; and I could not have formed it without greatly increasing my distance from the French fleet, contrary to that plan of operation, which I have already submitted to the judgment of the Court.

The Vice-Admiral of the Blue's next charge is, "That although my fleet was already dispersed and in disorder, I, by making the signal for several ships in his division to chase to windward, encreated the disorder of that part of my fleet, and that the ships were in consequence more scattered than they had been the day before; and that whilst in this disorder I advanced to the enemy, and made the signal for battle."

In this part of the charge there is a studious design to mislead the understanding, and, by leaving out times and intermediate events, to make the transactions of half a day appear but as a moment.—It is, indeed, impossible to read it, without being possessed with the idea, that at half past five in the morning, when I made the signal for six ships of the Vice-Admiral of the Blue's division to chase to windward, I was in the immediate prospect of closing with an enemy, approaching me in a regular line, and all their motions plainly indicating a design to give battle; instead of which, both the fleets were on the larboard tack, the enemy's fleet near three leagues, if not more, to windward, going off close by the wind with a pressed sail. My reason, therefore, for making that signal, at half past five, was to collect as many ships to windward as I could, in order to strengthen the main body of the fleet, in case I should be able to get to action, to fill up the interval between the *Victory* and the Vice-Admiral, which was occasioned by his being far to leeward; and it is plain, that the Vice-Admiral must have himself understood the object of the signal, since it has appeared in the course of the evidence, that on its being made, the *Formidable* set her main-sail, and let the reefs out of her top-sails; and, indeed, the only reason why it was not originally made for the whole division was, that they must have then chased as a division, which would have retarded the best going ships by an attendance on the Vice-Admiral.

Things were in this situation, when, at half past nine, the French Admiral tacked, and wore his whole fleet, and stood to the southward on the starboard tack, close hauled; but the wind, immediately after they wore about, coming more southerly, I continued to stand on till a quarter past ten, at which time I tacked the British fleet together by signal. Soon after we wore about on the starboard tack, the wind came two points in our favour to the westward, which enabled

enabled us to lie up for a part of them ; but, in a dark squall, that soon after came on, I lost sight of the enemy for above half an hour, and when it cleared away at eleven o'clock, I discovered the French fleet had changed their position, and were endeavouring to form the line on the larboard tack ; which finding they could not effect without coming within gun-shot of the van of the British fleet, they edged down, and fired on my headmost ships, as they approached them on the contrary tack, at a quarter after eleven, and then, and not till then, I made the signal for battle. All this happened in about half an hour, and must have been owing to the enemy's falling to leeward in performing their evolution during the squall, which we could not see, and by that means produced this sudden and unexpected opportunity of engaging them, as they were near three leagues a-head of me when the squall came on.

If therefore, by making the signal for the line of battle, when the van of my fleet was thus suddenly getting within reach of the enemy, and well connected with the center, as my accuser himself has admitted, I had called back the Vice-Admiral of the Red, the French fleet might either have formed their line complete, or have come down upon my fleet while in the confusion of getting into order of battle, or (what I had still greater reason to apprehend) might have gone off to windward out of my reach altogether, for even as it was, the enemy's van, instead of coming close to action, kept their wind, and passed hardly within random shot.

My accuser next asserts, as an aggravation of his former charge, " That the French fleet was in a regular line on that tack which approached the British fleet, all their motions plainly indicating a design to give battle."

Both which facts have already been contradicted by the testimony of even his own witnesses ; that the enemy's fleet was not in a regular line of battle, appeared by the French Admiral being out of his station far from the center of his line, and next, or very near to a ship carrying a Vice-Admiral's flag, and from some of their ships being a-breast of each other, and in one, as they passed the English fleet, with other apparent marks of irregularity. Indeed, every motion of the French fleet, from about nine, when it went upon the starboard tack, till the moment of the action, and even during the action itself, I apprehend to be decisive against the alledged indication of designing battle ; for if the French Admiral had really designed to come to action, I apprehend he never would have got his fleet on the contrary tack to that on which the British fleet was coming up to him, but he would have shortened sail and waited for it, and formed in the line on the same tack ; and even when he did tack towards the British fleet, the alledged indication is again directly refuted, by the van of the French fleet hauling their wind again, instead of bearing down into action, and by their hoisting no colours when they began to engage.

Notwithstanding these incontrovertible truths, my accuser imputes it to me that a general engagement was not brought on ; but it is evident, from the testimony of every witness he has called, that a
general

general engagement was never in my choice ; and that so far from its being prevented by my not having formed the line of battle, no engagement, either general or partial, could have been brought on if I had formed it ; indeed it is a contradiction in terms to speak of a general engagement, where the fleet that has the wind tacks to pass the fleet to the leeward on the contrary tack.

Such was the manner in which, after four days pursuit, I was at last enabled, by a favourable shift of wind, to close with the fleet of France ; and if I am justifiable on principle in the exertion of that discretion which I have been submitting to your judgment, of bringing, at all events, an unwilling enemy to battle, I am certainly not called upon to descend to all the minutiae of consequences resulting from such enterprize, even if such had ensued as my accuser has asserted, but which his own witnesses have not only failed to establish, but absolutely refused ; it would be an insult on the understanding of the Court, were I to offer any arguments, to shew that ships which engage without a line of battle, cannot so closely, uniformly, and mutually support each other, as when circumstances admit of a line being formed ; because it is self-evident, and is the basis of all the discipline and practice of lines of battle. But in the present case, notwithstanding I had no choice in making any disposition for an attack, nor any possibility of getting to battle, otherwise than I did, which would be alone sufficient to repel any charge of consequent irregularity, or even confusion, yet it is not necessary for me to claim the protection of the circumstances under which I acted, because no irregularity or confusion either existed, or has been proved ; all the chasing ships, and the whole fleet, except a ship or two, got into battle, and into as close battle as the French fleet, which had the option by being to windward, chose to give them. The Vice-Admiral of the Blue himself, though in the rear, was out of action in a short time after the Victory, and so far from being left to engage singly and unsupported, was passed during the action by three ships of his own division, and was obliged to back his mizen-top-sail to keep out of the fire of one of the largest ships in the fleet, which must have continued near him all the rest of the time he was passing the French line, as I shall prove she was within three cables lengths of the Formidable when the firing ceased.

Answer to the Second Article.

The moment the Victory had passed the enemy's rear, my first object was to look round to the position of the fleet, which the smoke had till then obscured from observation, in order to determine how a general engagement might best be brought on after the fleet should have passed each other.

I found that the Vice-Admiral of the Red, with part of his division, had tacked, and was standing towards the enemy with top-gallant sails set, the very thing I am charged with not having directed him to do ; but all the rest of the ships that had passed a-head of me were still on the starboard tack, some of them dropping to leeward, and seemingly employed in repairing their damages. The Victory herself

herself was in no condition to tack, and I could not immediately wear and stand back on the ships coming up a-stern of me out of the action (had it been otherwise expedient) without throwing them into the utmost confusion. Sir John Ross, who very gallantly tried the experiment, having informed the Court of the momentary necessity he was under of wearing back again to prevent the consequences I have mentioned, makes it unnecessary to enlarge on the probable effect of such a general manœuvre, with all the ships a-head. Indeed I only remark it as a strongly relative circumstance appearing by the evidence of a very able and experienced officer, and by no means as a justification for having stood away to a great distance beyond the enemy before I wore, because the charge itself is grossly false. In fact, the Victory had very little way while her head was to the southward, and although her damages were considerable, was the first ship of the centre division that got round towards the enemy again, and some time before the rest were able to follow her; since, even as it was, not above three or four were able to close up with her on the larboard tack, so that had it even been practicable to have wore sooner than I did, no good purpose could have been answered by it; hence I must have only wore the sooner back again to have collected the disabled ships which would have been thereby left still farther a-stern.

The Formidable was no otherwise left engaged with the enemy during this short interval, than as being in the rear, which must always necessarily happen to ships in that situation, when fleets engage each other on contrary tacks; and no one witness has attempted to speak to the danger my accuser complains of, except his own captain, who, on being called upon to fix the time when such danger was apprehended, stated it to be before the Formidable opened her fire, which renders the application of it as a consequence of the second charge too absurd to demand a refutation.

Answer to the Third Article.

As soon as I had wore to stand towards the enemy, I hauled down the signal for battle, which I judged improper to be kept abroad, till the ships could recover their station; or at least get near enough to support each other in action. In order to call them together for that purpose, I immediately made the signal to form the line of battle a-head, and the Victory being at this time a-head of all the centre and red division, I embraced that opportunity of unbending her main-top-sail, which was totally unserviceable, and in doing which, the utmost expedition was used, the ships a-stern of me doing all they could in the mean time to get into their stations, so that no time was lost by this necessary operation.

The Formidable was a-head of the Victory, during this period; it was her station in the line on that tack. Yet at the very moment my accuser dares to charge me with not calling the ships together to renew the attack, he himself, though his ship was in a manageable condition, as appeared by the evidence of his own captain, and tho' he had wore, expecting, as he says, the battle to be renewed, quitted
his

his station in the front of that line of battle, the signal for which was flying ; passed to leeward of me, on the starboard tack, which I was advancing to the enemy, and never came into the line during the rest of the day.

In this situation I judged it necessary that the Vice-Admiral of the Red, who was to windward, and passing forward on my weather-bow, with six or seven ships of his division, should lead on the larboard tack, in order to give time to the ships which had come last out of action to repair their damages, and get collected together; and the signal appointed by the 21st article of the fighting instructions not being applicable, as the French fleet was so nearly a-head of us, that by keeping close to the wind, we could only have fetched them, I made the *Proserpine's* signal, in order to have dispatched Captain Sutton with a message to Vice-Admiral Sir Robert Harland, to lead the fleet to the larboard tack ; but before he left the *Victory*, with the orders he had received, the French fleet wore and stood to the southward, forming their line on the starboard tack, their ships advancing regularly out of a collected body, which they had got into from the operation of wearing, and not from any disorder or confusion that really existed. I could have derived no immediate advantage from it, not having a sufficient force collected to prevent their forming, by an attempt to renew the attack. The *Victory* was at this time the nearest ship to the enemy, with no more than three or four of the centre division, in any situation to have supported her, or each other in action. The Vice-Admiral of the Blue was on the starboard tack, standing away from his station, not observing the signal that was flying to form the line, and most of the other ships, except the Red division, whose position I have already stated, were far a-tern, and five disabled ships at a great distance on the lee-quarter.

I trust they will convince the Court, that I had it not in my power to collect the fleet together to renew the fight at that time, and that from their not being able to follow me, I consequently could not advance with them ; that I did not haul down the signal for battle till it ceased to be capable of producing any good effect; that during the whole time I stood towards the enemy, I endeavoured by the most forcible of all signals, the signal for the line of battle, to call the ships together in order to renew the attack ; that I did avail myself of the ships that were with the Vice-Admiral of the Red, as far as circumstances admitted ; and that I therefore did do the utmost in my power to take, sink, burn, and destroy the French fleet, which had attacked the British fleet.

Answer to the Fourth Article.

The French fleet having wore and began to form their line on the starboard tack, by the wind, which if they had kept would have brought them close up with the centre division, soon afterwards edged away, pointing towards four or five of the disabled ships, which were at a distance to leeward, and with evident intention to have separated them from the rest of the fleet ; to prevent which, I made the

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were at a distance to leeward, and with evident intention to have separated them from the rest of the fleet; to prevent which, I made the signal to wear, and stood athwart their van in a diagonal course, to give protection to those crippled ships, keeping the signal for the line flying, to form and collect the fleet on the starboard tack. As I had thus been obliged to alter my disposition before Captain Sutton left the Victory, with my former message, I dispatched him with orders to the Vice-Admiral of the Red to form with his division at a distance a-stern of the Victory, to cover the rear, and to keep the enemy in check, till the Vice-Admiral of the Blue should come into his station, with his division, in obedience to the signal. These orders the Vice-Admiral of the Red instantly obeyed, and was formed in my wake before four o'clock, when finding, that while by the course I steered to protect the crippled ships, I was nearer the enemy, the Vice-Admiral of the Blue still continued to lie to windward, and by so doing kept his division from joining me, I made the signal for ships to bear down into my wake, and that it might be the better distinguished (both being signals at the mizen-peak) I hauled down the signal for the line about ten minutes, and then hoisted it again. This signal he repeated, though he had not observed that for the line of battle; but by not bearing down himself, he led the ships of his division to interpret his repeating it as requiring them to come into his wake instead of mine.

Having now accomplished the protection of the disabled ships, and the French fleet continuing to form their line, ranging up to leeward, parallel to the center division, my only object was to form mine, in order to bear down upon them to renew the battle; and therefore, at a quarter before five o'clock, after having repeated the signal for ships to windward to bear down into my wake, with no better effect than before, I sent the Milford, with orders to the Vice-Admiral of the Red to stretch a-head, and take his station in the line, which he instantly obeyed; and the Vice-Admiral of the Blue being still to windward, with his fore-top-sail unbent, and making no visible effort to obey the signal, which had been flying the whole afternoon, I sent out the Fox at five o'clock, with orders to him to bear down into my wake, and to tell him, that I only waited for him and his division, to renew the battle. While I was dispatching these frigates, having before hauled down the signal to come into my wake, I put aboard the signal for all ships to come into their stations, always keeping the signal for the line flying. All this producing no effect on the Vice-Admiral of the Blue, and wearied out with fruitless expectation, at seven o'clock I made the signal for each particular ship of the Vice-Admiral of the Blue's division to come into her station; but before they had accomplished it, night put an end to all further operations.

It may be observed, that amongst these signals I did not make the Formidable's. If the Vice Admiral chuses to consider this as a culpable neglect, I can only say, that it occurred to me to treat him with a delicacy due to his rank, which had some time before induced me to send the message by Captain Windsor, the particulars of which he has already faithfully related to the Court.

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I trust

I trust I have little reason to apprehend that the Court will be inclined to consider my conduct as I have stated it, in answer to this fourth article of the charge, as disgraceful to the British flag ! After I had put upon the same tack with the enemy, to protect the disabled part of my fleet, and to collect the rest together, there would have been little to do to renew the battle, but bearing right down upon the enemy, if my accuser had led his division, in obedience to the repeated signals and orders which I have stated. The Victory never went more than two knots, was under her double-reefed top-sails, and fore-sail much shattered, which kept the ships that were near her under their top-sails, and suffered the French fleet, which might always have brought me to action if they had inclined to do it, to range up parallel with the center, under very little sail. It was to protect the five disabled ships above-mentioned, and to give the rest time to form into some order, that I judged it might be expedient to stand as I did, under that easy sail, than to bring to with my head to the southward. The Court will judge, whether it was possible for any officer in the service really to believe, that these operations could give the least appearance of a flight, or furnish a rational pretence to the French Admiral to claim the Victory, or publish to the world, that the British fleet had run away.

Answer to the Fifth Article.

On the morning of the 28th of July, the French fleet, (except three sail which were seen upon the lee-quarter) was only visible from the mast-heads of some of the ships of the British fleet, and at a distance from me, which afforded not the smallest prospect of coming up with them, more especially as their ships, though certainly much damaged in their hulls, had not apparently suffered much in their masts and sails. Whereas the fleet under my command was generally and greatly shattered in their masts, yards, and rigging, and many of them unable to carry sail. As to the three French ships, I made the signal at five o'clock in the morning for the Duke, Bien-faisant, Prince George, and Elizabeth, to give them chase, judging them to be the properest ships for that purpose, but the two last were not able to carry sufficient sail to give even countenance to the pursuit ; and looking round to the general condition of my fleet, I saw it was in vain to attempt either a general or a partial chase. Indeed my accuser does not venture to alledge that there was any probability, or even possibility, of doing it with effect, which destroys the whole imputation of his charge.

Under these circumstances I could not mistake my duty, and I was resolved not to sacrifice it to an empty show and appearance, which is beneath the dignity of an officer, unconscious of any failure or neglect. To have urged a fruitless pursuit with a fleet so greatly crippled in its masts and sails, after a distant and flying enemy, within reach of their own ports, and with a fresh wind blowing fair for their port, with a large swell, would have been not only wantonly exposing the British fleet under my command without end or object, but misleading and defeating its operations, by delaying the reinforcement necessary for carrying on the future service with vigour and effect.

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My accuser asserts, by a general conclusion to the five articles exhibited against me, that from what he states as instances of misconduct and neglect in me, "a glorious opportunity was lost of doing a most essential service to the state," and that the honour of the British navy was tarnished.

The truth of the assertion, that an opportunity was lost, I am not called upon either to combat or deny. It is sufficient for me, if I shall be successful in proving, that that opportunity was seized by me, and followed up to the full extent of my power. If the Court should be of that opinion, I am satisfied; and it will then rest with the Vice-Admiral of the Blue, to explain to what cause it is to be referred, that the glorious opportunity he speaks of was lost, and to whom it is to be imputed, if the fact be true, that the honour of the British navy has been tarnished.

Having now, Sir, finished my replies, I shall call witnesses to prove my innocence. I have heard it asserted as matter of right to alter a log-book. I will only say, that there is a wide difference between correcting inaccuracies, and malicious alterations, for the purpose of aiding malicious prosecutions.

As to my prosecutor, I have even his own letters, of as late date as the 5th of October, wherein he thus writes to me: "I know that you would rather meet the French fleet." Yes, Sir, that very French fleet which he afterwards accused me of running away from! I cannot produce these letters in evidence, but I will shew them to any gentleman out of Court who desires to see them. I will also shew to any gentleman a paper which my prosecutor requested me to sign but a very short time ago, and I refused to sign it. In the news-papers my prosecutor denied receiving any message by the Fox frigate. Capt. Windsor swore to the delivery of such a message. He proved in evidence, that he received the message from me at five o'clock, and delivered it to the Vice-Admiral himself at half past five o'clock. Captain Bazely endeavoured to refute this evidence; but I shall call witnesses to prove the delivery of the message. My conscience is perfectly clear. I have no secret machination, no dark contrivances to answer for. My heart does not reproach me. As to my enemies, I would not wish the greatest enemy I have in the world to be afflicted with so heavy a punishment as my accuser's conscience.

On the finishing of this speech the hall resounded with shouts of applause.

TWENTY-SECOND DAY, MONDAY, *February 1.*

AT ten o'clock the Court was resumed. The first witness called by Admiral Keppel, was Vice-Admiral Sir Robert Harland.

Admiral Keppel. When the French were seen in the morning of the 24th, were they to windward or to leeward?—To windward.

Had they it in their power to come to action that day, on the 25th, or on the 26th?—They had it in their power on any of those days.

Did I pursue them with a press of sail till I brought them to action?—You did.

If you had commanded a British fleet of the same number of ships in the situation the French were then, would you have hesitated a moment to bring them to action?—Not a moment.

If I had pursued them in a line of battle, could I have preserved my nearness to them?—I think not.

On what tack did you see the French fleet in the morning of the 27th?—On the larboard tack.

Did they shew any more intention while on the larboard tack, or after they came to the starboard, of coming to action that day?—If this question means while they were upon the larboard tack, and after they had changed to the starboard at eight o'clock, they shewed no more design of coming to action than on the preceding days.

If I had formed my line of battle while they were on the starboard tack, could I have brought them to action that day?—You could not, unless they had chosen to come to you.

Was there any squall that obscured them that morning?—They were obscured frequently.

At what time did the fighting begin?—Between eleven and twelve.

On what tack were they then?—On the larboard tack.

Were not the centre and rear divisions in some confusion when we passed them?—When we passed them, the van was not well connected with the centre, nor the centre with the rear.—There were six ships that had come up with the van, and two more near them that seemed in a confused state.

Did they begin their firing at your ship at a very great distance?—They did.

If I had ordered ships of your division to chase to windward, and after that I had come engaged in the ship where my flag was, so that I could not order distant ships, would you not have thought yourself warranted to have called those ships to you, if you had judged it for the service of the moment to have done so?—I should have been happy to have rendered any service to you while I had a command in it; and the occasion, as stated in the question, would certainly have warranted me in calling the ships to me.

Did you see the Formidable after you had passed the line, while she continued engaged?—I saw her when she came out of the cannonade, and when I was going into your wake.

When you saw her coming out of the fire of the rear of the French line, did there appear the smallest danger of her being cut off?—There did not appear the smallest intention of doing so.

After you had come out of action, and leading on the larboard tack on the Victory's weather-bow, how many ships of your division were there connected together?—At most seven.

How many points of the compass were you to windward of the French?—They were upon my lee-bow, and a-head.

If I had directed you to lead down upon the enemy, had I a number of ships with me to have supported you in re-attacking the French fleet?—Most certainly you had not.

Did you see the French ships draw out on the starboard tack, and form their line?—I did.

Did they, in that operation, appear in a connected and close body?—They were not in a regular line, and therefore not in a close body.

Had it a confused appearance, or did it seem the result of their change of position?—There appeared no confusion.

In the situation the English fleet were in, was it in my power, as an officer, to have prevented them from forming their line?—It was no more in your power to have done that, than it was in your power to collect your ships for that purpose.

What then would have been the probable consequence, if I had ordered you to have attacked them?—I should have engaged; and the French would have deserved to be hanged if they had not taken my whole division.

Did you receive any orders from the Porcupine that afternoon?—Yes.

What were they?—To fall, with my division, into the rear of the Victory.

If you had not received such orders, did you see reason to put yourself in that situation, for the safety of the moment, at your risk as an officer?—Before I received the orders, I saw the necessity there was of taking that post, and was doing it on my own risk.

What were your inducements?—Seeing the Commander in Chief, unsupported, in the power of the whole French force that was a-stern of him.

If the Vice-Admiral of the Blue, while you was in the Victory's rear, had fallen down to have taken his station, would you not have thought yourself warranted to have made sail to the head of the fleet, even if such orders had not reached you?—I should have wished to have received the orders; but if I had not, the same reason that had induced me to go into the rear, would have led me to the van for the service of the whole.

What time did you receive orders to take your own station?—About five o'clock.

Was the signal for the line of battle flying all the afternoon, except about ten minutes, when the signal was hoisted for ships to come into the line?—It was.

Had the British fleet, by bearing to the southward on the same tack with the French, (under the sail they carried) the appearance of a flight?—O! FIE, NO!

Were we then avoiding the French fleet, or were we in doing so executing a proper manœuvre to form our line, and bring on a general and decisive engagement?—You were using every means to collect your force, and I doubt not but if you had been able to do so, you would have brought on a general and decisive engagement.

Did I neglect any time in the afternoon to bring them to action while there was day-light?—If I did not say it before, I say it now, you had it not in your power to bring them to action.

Did you observe what sail the *Victory* was under in the afternoon?—Under her top-sails sometimes, and sometimes under her top-sails and mizen.

What sail did you carry in the *Queen* during the night to preserve your station?—Sometimes our top-sails, and sometimes under our top-sail fore-sail reefed.

Did you carry your distinguishing lights all night?—I always carried my distinguishing lights.

Were the *Victory's* from the bowsprit end seen from the *Queen* all night?—I saw them myself.

Do you recollect at what a rate you went in the night?—I think sometimes under two knots, and never above three.*

On the 28th in the morning, did it not appear that the French had run off in the night?—The French made their escape in the night.

On the morning of the 28th, were the French seen from the *Queen's* mast-head?—They were standing to the southward.

If I had attempted the pursuit of them, was there the least probability of reaching them conditioned as the English fleet was, before they had got into Brest?—There was not.

You have heard the charge read, I therefore desire of you to state to the Court any instance, if you saw or knew of any such, in which I negligently performed my duty on the 27th or 28th?—I know of none, and therefore I cannot state any.

Mr. MOORE, Under-Secretary to Admiral Keppel was called.

Admiral Keppel. Did I not appoint you to be near my person, and take minutes and observations for my use?—You did.

Do you remember the relative situation of the fleet in the morning of the 27th?—He begged leave to refer to his minutes; he had taken them at the time, from his own observation, it had been in his custody ever since, undergone no alteration or correction, and was then in his hand.—At half after five, the Vice-Admiral of the Red, with most of the ships of his division, and some of the centre, were about three miles to windward of the *Victory*, and the Vice-Admiral of the Blue was between three and four miles to leeward, except the Ocean.

Do you recollect what sail the Vice of the Blue carried?—The *Formidable's* main-sail.

What situation was the French Admiral with respect to the *Victory* in the middle of the engagement?—She was nearly on the weather-beam in the centre of her own division.

Did you see a signal made in the morning of the 27th for ships of the Vice-Admiral of the Blue's division to chase to windward?—At half after five signals were made for six ships to chase to windward.

What did it appear to you was the intention of that signal?—Most of the ships of the centre were to windward of the *Victory*, and there was a large space between the centre and rear, and I conclude it was intended to bring up the best sailing ships to support the centre.

Was there any greater indication at that time of the French intending to fight than on the preceding days?—None; they were close hauled, carrying as much sail as the worst sailing ships could keep up with.

Did you observe the French fleet change their positions any time in the morning of the 27th, between eight and ten o'clock?—My observation was principally attached to the French Admiral. At half past nine he tacked, and continued to carry the same sail as they had on the larboard tack.

What time did the British fleet tack?—Soon after the French fleet had tacked, the wind changed somewhat to the west, so that the British fleet stood on till a quarter past ten, when we changed from the larboard to the starboard tack.

Was there any alteration in the wind at this time?—It shifted near two points. We soon afterwards, in a thick squall, lost sight of the French fleet.

After this, did you see the French fleet get upon the larboard tack, and at what time?—We had lost sight of them from twenty minutes after ten to eleven; when we recovered the sight of them, they appeared in considerable confusion, and part of them, bearing S. S. E. and they were then getting on the larboard tack. That body of them which bore S. S. E. were in such confusion, that the Admiral and most people on board thought they were a-board of each other.

At what time did the firing begin?—At 15 minutes after eleven.

The French ships that began action, had they their colours flying?—Neither the British nor the French ships had their colours flying.

At what time did I make the signal for battle?—At 20 minutes after 11.

Was the French fleet in a regular line of battle when the action began?—The French van was very irregular; some more than a mile to windward of others, at very unequal distances from each other. They kept their wind as they approached us; and what was properly their centre was pretty compact, but not regular; the rear was much to windward of the *Bretagne*, with the ships about her, and must have passed the *Victory* while she was engaged with the centre.

Were the greatest part of the British ships, when they came to action, though not in a line, in a situation speedily to support each other?—They were.

How long was it before the *Victory* engaged with the French Admiral, after she had come into the action?—Twenty-seven minutes.

How many ships of the enemy's fleet fired upon the *Victory* before the Admiral?—Almost all the ships of their van fired upon the *Victory*.

Did the Victory return the fire of those ships?—Not one.

How many ships a-head of the Admiral fired to do execution?—Three sail fired upon us, but unless two or three shot that were fired, the Victory reserved her fire for the Bretagne.

How did the French Admiral appear to be situated with respect to his fleet?—At a quarter before twelve, when we began to fire on the Bretagne, there was a three-decked ship with a white flag at her fore-top-mast head, close a-stern of the Bretagne; there were then three sail of private ships.

At what time did the Victory pass the rear of the French fleet?—At one o'clock.

At what time did I make the signal to wear back towards the enemy?—Ten minutes after, but the Victory could not be wore till a quarter before two.

What ships wore with the Victory, and when was the signal hauled down?—Not a ship wore with the Victory. The Prince George steered on, and about a quarter of an hour after, she and some other ships wore; the signal was hauled down just about the time we wore; from a quarter before two till three there was not a single ship formed and connected with the Victory.

At what time was the signal for the line of battle made after being on the larboard tack?—At two o'clock.

Did you observe any ships whilst the Victory was on the larboard tack fall into their stations and close with the Victory?—There were no ships on the same tack but the Prince George, the Bienfaisant, and the Foudroyant, and none of these were in their station; the Valiant came about, but could not join us, and all these were more than a mile from us.

What was the situation of the French fleet while we stood after them?—Three sail were to windward, a large body right a-head, and their sternmost ships on our lee-bow. At half after two, they were about three miles from us. They then began to get round to form their line, and set their head, so that they would have weathered the Victory, but at three o'clock they pointed their ships to four or five ships that were disabled, and far to leeward.

Did you observe one of their ships go off before the wind?—At half past two, I saw one go off with her main-yard and mizen-top-sail gone, and was soon after following by a frigate.

What was the position of the Red division while we were on the larboard tack?—When I first saw the Red division after the action, they were on the Victory's lee-bow, standing towards us; they continued to stand on the larboard tack, some of their ships passing us very close. At a quarter before two, when we wore, the Vice-Admiral of the red with seven sail, himself included, were on the Victory's weather-bow. At half after two, when the French were forming their line, and we standing towards them, the Vice-Admiral of the Red was a little before the beam. At three o'clock, he was upon the larboard bow, full two miles and a half from us.

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Can you describe the situation of the British fleet when the French began to form their line?—The Vice-Admiral of the Red, with six or seven ships, was pretty well connected. The Vice-Admiral of the Blue was about passing us, standing on the larboard tack; four or five sail were far to leeward; four sail of the centre division in different positions round us, which four ships, except the Vice-Admiral of the Red, were all that were on the larboard tack.

When was the signal made for the British ships to wear to the southward?—At twenty minutes past three.

Do you recollect the position of the Vice-Admiral of the Blue at that time?—We passed the Formidable to leeward, and after that several of the ships of the Blue division continued to join him; and they remained to windward.

Was the signal flying at that time to form the line of battle?—The signal was made at two o'clock, when we were on the larboard tack, and was continued till within twenty minutes of four.

When was it hoisted again?—It was hauled down at that time to let the fleet see the signal for the ships to windward to come down into the Admiral's wake; and in about ten minutes after, the fleet having seen that signal, the signal for forming the line of battle was again hoisted, and continued flying, I believe, all night.

After the Victory was about on the starboard tack, did she lead from the wind to give protection to those ships that were to leeward?—On our first coming about, to sail on the starboard tack, she stood upon his wind for about ten minutes, to endeavour to collect some of the ships; but the Admiral gave that up, and at the time he ordered the Victory to be kept from the wind, he observed that the French had a design to affront him, by making an attack upon the disabled ships to leeward.

What time was the signal for the ships to windward made, to come into the Victory's wake?—At forty minutes after three, and was hauled down ten minutes before four. At half past four the signal was again made.

What was the position of the two Vice-Admirals then, and until five o'clock?—The Vice-Admiral of the Red, with six or seven sail, was forming a-stern of the Victory, in consequence of a message that had been sent to him by Captain Sutton. The Vice-Admiral of the Blue, with seven or eight sail, was to windward, keeping their wind between two or three miles from us. I could count every gun and every part distinctly.

What had been the conduct of the French fleet, and how were they situated with respect to the English fleet, and what was their situation at that time?—They had held their course nearly parallel to that held by the Victory. They were at half past four about three miles a-stern, and to leeward of the Victory.

At that time what sail had the Victory set?—Her fore and mizen-top-sail set, her main-top-sail, with two reefs in it, was also set.

Did you hear any messages or orders sent by frigates in the after-

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noon?

noon ?—At five o'clock the *Milford* was sent to acquaint Sir Robert Harland to form a-stern of the *Victory*. The *Fox* was sent immediately after to Sir Hugh Palliser to acquaint him, that the Admiral only waited for him, and the division with him, to bring the enemy to action.

Do you remember any general signal that was made at that time for ships to get into that station ?—At five minutes past five a signal was made for all ships to get into their stations, a Spanish flag being at the main-top-mast head.

What ships were there a-stern of the *Victory* after Sir Robert Harland had left the rear ?—Not one but the *Foudroyant*.

Did the Vice-Admiral of the Blue obey the general signal, and bear down any part of the afternoon ?—No.

What was the position of the Vice-Admiral of the Blue from five till seven o'clock ?—He was still on the same wearing, but kept his wind.

Were there any particular ships signals made about seven o'clock for them to come into their station ?—At seven, particular signals belonging to every ship of the Vice-Admiral of the Blue's division, except the *Formidable's*, was made: The general signal for ships to come into their station was flying at the same time.

What sail was the *Victory* under after the last time you spoke of ?—Double reefed top-sails and fore-sails, going about two knots.

Did she make less sail than that before dark ?—At eight o'clock we close-reefed our top-sail.

What was the relative situation of the two fleets when night set in ?—The Red division was formed a-head of the *Victory*; most of the ships of the centre had joined us. Two or three ships were formed a-stern of the *Victory*; the *Vengeance* more a-stern. The Vice-Admiral of the Blue, with his division, were still to windward about three miles, except three or four sail of them which had began to obey the signals to come down into the line. The French fleet were steering a parallel course to the *Victory*; the third ship of the French van a-breast of our quarter, about a mile and a half to leeward of us; the French line was formed with fourteen sail a-head, and fourteen a-stern of the Admiral, and the ships were under different sail.

Was the signal for ships to come into their station, and for forming the line, flying till dark ?—Long after dark.

Did you see the Vice-Admiral repeat the signal for the line, or for ships to come into their station any part of the afternoon ?—In the beginning of the afternoon, she had then no signals flying. At half after four she repeated the signal for ships to come into the Admiral's wake, but I did not see her repeat any other the whole day.

Where was she when you last saw her in the evening ?—About three miles from the *Victory*, standing upon a wind, about two or three points abaft the beam.

In the morning of the 28th, how many of the French fleet were in sight ?—Three sail; one much larger than the others.

What distance were they from the Victory?—Three miles.

Were any signals made to chase those ships?—Signals were made for the *Bienfaisant*, the *Duke*, the *Prince George*, and the *Elizabeth*, but the last informed the Admiral, she could not carry sail, and it was visible the *Prince George* could not make sail. [Withdrew.]

Mr. ROGERS, Secretary to Admiral Keppel was then called.

Admiral Keppel. Did you usually take notes at my desire during the late war, and did you on the 27th of July?—I had the honour to attend on you in that situation during the late war, and in the same capacity on the 27th of July, and it is my greatest pride.

What time did the French begin to fire?—Twenty minutes before eleven.

When did I make the signal to engage?—Forty minutes after eleven.

What ship did the Victory first engage?—A three-decker with a flag at the main-top-mast head.

Did I pass any other three-decker after?—Yes, there was another which followed the first close, and approached us very near indeed, so as to appear as coming on board us.

In what part of the French fleet were the two Admirals?—Very near the rear.

When did the Victory pass the rear of the French fleet and cease firing?—At one o'clock, or a few minutes past.

When did I make the signal for the fleet to wear?—Forty-five minutes past one.

When was the signal for battle hauled down?—Near that time.

What number of ships wore with the Victory, when she wore to get on the larboard tack?—I saw few or none.

When, after being on the larboard tack, was the signal for line of battle made?—At two o'clock by my watch.

When was it made to wear to the southward again?—Twenty minutes past three.

Were the French then forming their line?—They were drawing out in a body forming a line.

Had they before been standing towards the Victory, how were they steering, and how long had they been so standing?—I cannot answer that question directly. When the Victory wore to starboard tack they were on her stern.

Before the Victory wore to the starboard tack, were the centre or the Vice of the Blue's division closely connected with her?—None could be said so to be.

Did you observe, after wearing, some British ships repairing their damages situated some distance to leeward?—Yes, four.

Did the enemy's van point towards them?—It did so; they kept away seemingly for that purpose.

Did the *Victory* edge away a point or two towards them to secure their junction?—She did.

Was the signal for line of battle flying when I was to southward, and till dark, or was it ever hauled down, to shew that other ships were to come into my wake?—From two o'clock till dark, according to my notice, it was flying; but I heard it was hauled down for the purpose of shewing another flag.

Did you ever observe the signal for line of battle a-head, repeated on board the *Formidable* during that afternoon?—No.

When did I send the *Milford* to Sir Robert Harland that afternoon, after being on the starboard tack?—Three quarters past four, by my watch, the message was sent him.

When did I send the *Fox* to Sir Hugh Palliser?—I cannot say as to the minute, but it was directly after hailing the *Milford*, which I have considered as at, or rather before five.

What orders did I send by the *Fox*?—To inform the Vice-Admiral of the Blue, that you only waited for him, and the ships of his division, to renew the action.

Did you observe the *Fox* speak to, or range near the *Formidable*?—I saw the *Fox* close under the lee-quarter of the *Formidable*.

At what time?—About half an hour after five.

Did the Vice of the Blue bear down in consequence of my orders?—I saw no motion made on board the *Formidable* to comply with those orders, though I watched her attentively.

How far upon the weather-quarter did she then appear?—Pretty far drawn upon the quarter, I think.

Were any signals made about seven o'clock on board the *Victory*?—Several pennants thrown out for ships to come into their stations.

How was the Vice of the Blue then situated?—I observed no alteration in his situation.

How many of his ships bore down?—Some did; I cannot say how many.

Were the French fleet seen on the morning of the 28th from the *Victory*?—At the opening of the day I saw three ships, one of which I kept my eye on, at times, most of the night.

Did I send ships to chase them?—There were signals made for ships to chase.

What ships?—Prince George, Elizabeth, Bienfaitant, and I believe the Duke.

Was it observed afterwards that some of them were crippled?—I observed particularly the Prince George could set no sail upon his fore-top-mast.

Do you recollect the trouble and perplexity in my directing, and your copying the letter descriptive of the action of the 27th, so as not to affect the Vice-Admiral of the Blue's character?—I perfectly recollect

collect your difficulty to relate, in the rough draught, facts, without censuring the man whom you then thought your friend, and whose courage I know you thought well of.

If the signal for line of battle had been flying on board the *Formidable*, was you so situated as to see it?—If it had been flying, I think I might have seen it.

Did you hear the Admiral express his displeasure at the ships of the Blue division not bearing down, and say, if they had done so, that he would have renewed the action?—The Admiral expressed the greatest anxiety and uneasiness at the ships not bearing down, and it was my idea, and, I believe, the sense of all the ship, that he only waited for these ships to renew the action.

Cross-Examination by Sir Hugh Palliser.

Are the hours and minutes marked in your minutes, when the orders were given to the *Fox*?—The time of hailing the *Fox* is marked at three-quarters past four, and the message was delivered so soon after, that I did not note it, but I know it was not more than five o'clock.

As the *Formidable* was so much a-stern, are you sure that the signal might not be flying at the mizen-peak?—I did not see it.

TWENTY-THIRD DAY, TUESDAY, February 2.

AT ten o'clock the Court was resumed, when REAR-ADMIRAL CAMPBELL was called by Admiral Keppel.

Admiral Keppel. What day was the French fleet first discovered? On the 23d.

Were the French fleet able to determine the force of the British fleet then?—Certainly not.

What were the positions of the English and French fleets in the morning with respect to each other?—The French fleet was on the weather-bow, at a considerable distance.

Can you inform the Court what signals I made that morning, and what were the objects of them?—The first signal was to form the line of battle, but seeing the French setting sail to get off, the signal for chasing was hoisted.

Do you remember Captain M^rBride's coming on board the *Victory* on the morning of the 24th, to give an account of some observations that he had made on the French fleet?—Yes; and gave an account of some French ships that he saw to leeward; one in particular without her fore-top-mast, and another without her main-yard, and he advised us to bear down, and either to cut them off, or force the French to action for their protection.

What was the order given to Captain M^rBride?—He was ordered with another ship to chase those two ships.

Do you recollect two other ships of the French fleet that the British fleet cut between, and separated from the French fleet?—Yes, I do recollect

recollect very well two large ships in the morning of the 24th on the lee bow, which were cut off by the general chase, and they went off.

If the French Admiral had ever intended to give battle to the English fleet, was not the junction of these ships to the main body a temptation to bring it on that morning?—Most certainly.

Do you recollect my making the signal for the line of battle that afternoon again?—Yes.

Did not the French fleet avoid us every day?—Yes.

If you had commanded an English fleet in the situation the French were with us, would you have hesitated one moment to have come to battle on any of those days, on account of wind and weather?—I should not.

If I had pursued in line of battle, could I have preserved my nearness to the French fleet, or even have kept sight of them?—No: for as it was, you were more than once in danger of losing sight of them, and had actually lost sight of them one morning for about an hour.

I should be glad if Admiral Campbell would give an account of the situation, and the motions of the English and of the French fleets on the 27th at day-light, and of what passed?—At day-break the French Admiral was to windward for about three leagues on the weather-beam of the English Admiral; the Vice-Admiral of the Red on the weather-quarter of the Victory, with his division. The Vice-Admiral of the Blue a little before the lee-beam, the Vice-Admiral with his main-sail up. About nine o'clock the whole of the French fleet were about.

When the signal was made for the ships of the Blue division to chase, was there any greater indication of the French intending to come to action, than on the preceding days?—No, by no means.

What would have been the consequence if I had formed the line of battle, instead of closing with them in the manner I did?—You would have increased the distance as much as it was at the moment you first saw them.

Would that have been the way of bringing them to action?—No, quite the contrary.

From the time that I tacked by signal, what passed before I passed the rear of the French fleet?—The French fleet tacked by signal, and the wind changing soon after, we set our stay-sails and main-top-gallant-sail, in order to near them. When the squall cleared away, we found the French fleet had altered their course, and were very near to Sir Robert Harland's division; and seeing some of their ships in confusion, we pressed all the sail we could; and when we came up to the French Admiral, we engaged, and continued to fire upon the ships in succession till we passed the line. The van of the French wore in a pretty regular line, except in point of distance; but the rest of their fleet was by no means in a regular line.

I am charged with standing a great way to the southward before I wore; I desire you will inform the Court, whether it was practicable or expedient for me to wear sooner?—No, it was not.

When

When I did wear, were any of the ships about me able to wear with me, or did they?—No, none of them wore with you that I saw.

Had you any reason to believe, from any thing you saw, or was acquainted with, that the Vice-Admiral of the Blue was exposed to be cut off?—No.

When was the signal for battle hauled down?—Orders were given to haul it down immediately after the ships were out of engaging distance.

As I am charged with hauling it down at that time, was it in your opinion proper to be kept up?—No, it was not.

Did I not make the signal for the line when I hauled down the signal for battle?—It was immediately made on our wearing to the larboard tack.

Was that the most proper signal for calling the ships together?—Undoubtedly it was.

I am charged with shortening sail, when advancing towards the enemy after I had wore. I ask you if I had ships enough to enable me to advance faster?—No, the whole time that the Admiral stood towards the enemy, he had not got one ship a-head of him, nor any closed with him a-stern. The Vice-Admiral of the Blue was a-head of the Victory when the signal for the line was made, but instead of remaining there, and repeating the signal for collecting the ships of his division, he passed the Victory on the starboard tack, in direct disobedience to the signal of the Admiral.

Where was the French fleet at this time?—They were right a-head of the Victory.

As the two fleets were then situated, was the signal appointed by the 31st article of the fighting instructions applicable to the purpose of directing the Vice-Admiral of the Red to lead on the larboard tack?—Certainly it was not; for it has a direct and determined signification, and can be applicable to no other situation.

When I was on the larboard tack, did you see the French fleet in disorder?—No, I saw them in no other disorder than what arose from their change of position.

Had I, at any time, while on the larboard tack, a sufficient force with me, to enable me to go down to the enemy?—As I have said before, there was not one ship a-head of you, and not more than four in their stations a-stern of you.

Was the signal for collecting the ships flying all the time I was on the larboard tack?—It was hoisted very soon after we got upon the larboard tack, and continued flying all the afternoon.

Under these circumstances, did I not do the utmost in my power *take, to sink, burn, and destroy* the French fleet?—I think you did.

I am charged with having wore at this time, and standing from the enemy, leading the whole fleet directly away; I desire you will explain all that you know of that circumstance?—The French fleet beginning to form on the starboard tack, you dispatched Captain
Sutton,

Sutton, with orders to Sir Robert Harland to form a line in the van; but before Captain Sutton got off, the French fleet edged away, and pointed towards four or five disabled ships in the leeward, on which you ordered the signal for wearing, saying to me, "Don't you see them make for those disabled ships, I must not receive an affront there; I must go and succour them, which you did."

Was the signal for the line still kept flying?—It was.

What sail did I carry at this time?—Double-reefed top-sails and fore-sails; we were just beginning to haul out our main-sail, as we were to go down and succour these ships.

Do you recollect my ordering the *Milford* to Sir Robert Harland, to quit the rear, and form a-head, and at what time?—Sir William Burnaby was ordered at five o'clock to go to Sir Robert Harland, to resume his station in the van.

Do you recollect my sending the *Fox* to the Vice-Admiral of the Blue at the same time?—I do.

What were the orders that were sent to the Vice-Admiral?—Capt. Windsor was directed to inform the Vice-Admiral to come down with all expedition into the Admiral's wake, as the Admiral only waited for his division to renew the engagement.

Do you know what the words were?—Yes; I told him myself to tell the Vice-Admiral we had long waited for him.

Do you recollect my speaking to him from the stern gallery?—Yes; but I cannot be precise as to the words.

Where was the Vice-Admiral of the Blue at this time?—Wide upon our weather-quarter.

After being on the starboard tack, did I not the whole afternoon express my uneasiness and surprize at the Vice-Admiral's continuing to windward, without making any effort to come down in obedience to signals?—You frequently did; and I remember upon one occasion expressing my apprehension that the Vice-Admiral was wounded, as I could not conceive that the *Formidable* would behave so if he was well.

Did I not express to you often my intention of re-attacking when he should come down?—Yes.

Did I ever seem to have given up my intention of re-attacking that day till night came on?—No.

Do you recollect what sail I ordered to be carried, for regulating our course in the night?—At eight o'clock we made tack in the third reef of our mizen-top-sail, that we might not obstruct the view of the ships a-head; and we went under double-reefed top-sails all night.

Admiral Keppel. May I beg the indulgence of the Court to have the *Robuste's* log-book read, respecting the alteration, or rather the addition of the words, "the Admiral making much sail" all the night. After Admiral Campbell's defence, Mr. Keppel observed there required no comment on that addition.

You

You have heard the 5th article read, wherein I am charged with not having pursued the French fleet in the morning of the 28th. I desire you to inform the Court all that you know of this particular?—In the morning of the 28th, the French fleet were not seen. There were three sail seen at a considerable distance from our stern-most ships, and signals were made for the Prince George, the Elizabeth, the Bienfaitant, and the Duke (whose signal was made, because she had suffered least in the action). But the Prince George and the Elizabeth made signals that they could not chase, so that the three sail having got greatly the start of us, before it was ascertained that they were French, the chasing ships were called in, and the signal made to set up rigging.

In the situation the fleet was then in, was there any probability of our coming up with the fleet, if I had pursued to eastward before they had reached the port of Brest?—I think there was none. The pursuing with a fleet in the situation they were in, would have certainly separated them, as the disabled ships must have fallen a-stern. What I mean by disabled ships is, disabled in their sails and rigging, so that they could not carry chasing sail.

One thing I had forgot; I must beg leave to ask Admiral Campbell now, when I was upon the starboard tack, under the degree of sail you have described, did it carry the most distant appearance of a flight?—It did not.

Did you see the Vice-Admiral of the Blue repeat the signal for the line, on any part of the afternoon, or evening of the 27th?—No. And I think it would have been very improper and un-officer-like, to have repeated the signal without obeying it.

You have heard all the articles of the charge read, I therefore desire you to state to the Court any instance of negligence or misconduct, that you saw or know that I committed on the 27th or 28th of July?—I never saw any negligence, either then or at any other time, and I never served under any Admiral, who was more diligent in the execution of his duty than the Admiral was.

Did I not give orders to reverse the line of battle, if I should find a necessity or an advantage in doing so?—Yes, you did.

Did I not add to the fighting instructions this addition after we were at sea: “The flag of the Admiral is always to be considered as the centre part of observation in forming the line.”—Yes.

President. What time did the Vice-Admiral of the Blue get into his station in the evening of the 27th?—Not while there was any light to renew the engagement.

Did you see the Vice of the Blue's distinguishing lights in the night-time?—I did not see him till morning.

What distance was he the next morning from the centre?—I did not take notice.

Cross-Examination by Sir Hugh Palliser.

When the Admiral was standing towards the French, Admiral Campbell has stated that the Formidable was the only ship a-head of
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him ; I ask you if the *Formidable* was not within gun-shot of the enemy till the signal for battle was hauled down, and the *Victory* had shortened sail ?—I never saw the *Formidable* on the larboard tack, nor did I ever hear that she was so till the Vice-Admiral told me so himself.

When was the time you saw her a-head ?—A little before the two ships met, when the *Victory* was on the larboard tack, and the *Formidable* on the starboard.

Then, Sir, as the *Formidable* was on the starboard, was it possible to see whether she had the signal for the line out or not, on board the *Victory* ?—The *Victory* was not the ship that the Vice-Admiral was to look at for the signal. When the gun was fired he ought to have observed the repeating frigate.

Was not Captain Marshall, of the repeating frigate, on board the *Victory* when the *Formidable* passed her ?—He was on board when she wore to bear down, a quarter of an hour after the *Formidable* had, but I do not think he was on board then.

Whilst he was on board, was not his frigate near to the *Victory*, in readiness to take up the Captain's boat, to steer him, as he was commanded ?—I do not recollect ; it might be so.

That being the case, was not the signal on board the repeating frigate equally invisible to the *Formidable*, as that on board the *Victory* ?—The signal had been made on board the frigate long before the Captain came on board the *Victory*.

If you do not know whether the signal for wearing was out or not, when the *Formidable* and the *Victory* met, I ask you, whether you are not very precipitate in charging me with direct disobedience of orders in standing on that tack ?—No, I am not ; for the signal for wearing was not made for full three quarters of an hour after the signal for the line was out ; but even if it had been so, he acted in direct disobedience of orders, by wearing before the Admiral wore.

What, if I had not seen the signal for the line ?—I never meant to reproach nor charge any man with disobedience of a signal he never saw. It was the *Formidable's* duty to have seen that signal ; and I think she must have seen it, if she had properly looked out for it.

Is it possible for one ship to see the signal of another end on ?—When two ships carry the same signal, who are at a little distance from each other, I do not think it is possible for another ship to be in such a situation, as not to see it on one of the two ships. And I am sensible if the *Formidable* did not see it, she was the only ship in the fleet that did not.

Admiral Arbuthnot. Did the *Formidable* pass you in such a situation as to enable you to have seen the signal, if it had been flying ?—I saw the whole of her, and the signal was not flying.

Sir Hugh Palliser. Did you not see it hoisted soon after ?—I did not see it at any part of the day ; I saw her hoist a blue flag at the mi-
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zen-peak, a signal for the ships to come into the line, but I never saw her hoist the signal for the line of battle.

At the time the blue flag was hoisted on board the *Victory*, which you say the *Formidable* repeated, was it not within half an hour after the signal for wearing?—To the best of my remembrance it was not till an hour after we had wore.

But supposing it had been no more than half an hour, how far would the *Formidable* have been distant?—That is a question of supposition that I cannot answer, since it must be owing to the rate and course of sailing.

Why did the Admiral order the Vice-Admiral of the Red to take the station in the rear, just after the Blue division came out of action?—Because the Blue division and part of the centre had bore on, and were not in condition to have taken that station; but when the Admiral ordered Sir Robert Harland to his own station a-head, they appeared in condition to have fallen down, or, at least, a greatest part of them.

Is it noted on board the *Victory*, the hour and minute, that the message was delivered to the *Fox*?—I have always understood that it was, and I have one minute myself where it was noted.

Was the Admiral waiting for my coming down, or did he not continue sail as before?—We continued under the same easy sail as before.

Was it not known on board the *Victory* before twelve o'clock that night, that the French fleet had bore away?—No; it was not known till day-light, and was then a matter of surprize to every body.

Were any frigates stationed between the two fleets in the night-time, to observe the motions of the enemy?—No; but if any had been, and the Admiral had known of their running away at the time, I know not any one step that he could have taken to prevent it. His signals had been so ill-obeyed by the Vice-Admiral of the Blue during the day, that I think he durst not have made a signal to chase, nor have risked an engagement, after the damp that disobedience had given to the whole fleet.

Was not the *Duke* one of the most slow sailing ships in the fleet?—The Admiral had very good reasons for believing that the *Duke* was the least crippled of any ship in the fleet. [Withdrew.]

Capt. MARSHALL, of the *Arethusa* frigate, was again called.

Admiral Keppel. Did you see the signal for the line flying on board the *Victory* after the action, while standing on the larboard tack?—I have said that it appeared so by my minutes, and that I repeated it.

Did you keep it aboard repeated all the time I stood so on the larboard tack?—I think so.

Did you see the *Formidable* while the *Victory* was on the larboard tack?—Yes.

How was the *Arethusa* situated with respect to her?—On her weather-quarter.

Sir Hugh Palliser. When and by whom did you receive notice to attend the Court?—I was given to understand that I should be wanted.

Admiral Keppel. I shall be glad to know if the prosecutor admits the letter in the *Morning-Post*, signed “Hugh Palliser,” to be his, or if I must put it to proof.

Sir Hugh Palliser. I admit it to be mine.

Captain FAULKNER, of the *Victory*.

Admiral Keppel. What would have been the consequence if I had formed the line of battle, instead of closing with the French on the 27th of July?—That they could not have been brought to action at all.

With what part of the French fleet did the *Victory* begin action?—Several of the French ships fired upon us, but we reserved our fire for their Admiral.

Were your men in good order, sober, and obedient on that day?—Entirely so.

Was the French fleet in a regular line?—They were not in a regular order, but in that sailing order which approaches nearest to a line.

Where there not two French Admirals near one another?—There was only one ship between the *Bretagne* and another flag ship.

Did the van keep their wind as they passed?—As much as possible.

Did they pass out of gun shot?—The 4th or 5th ship a-head of the *Bretagne* fired on the *Bretagne*, and her fire hardly reached her. The ships a-head of those ships were still further off.

I am charged with standing to a great distance beyond the enemy, before I wore to stand towards the enemy again. I desire you to inform the Court, whether it was practicable for me to wear sooner, and when I did wear, whether any ship wore with me?—The *Victory* was wore as soon as it was practicable, and sooner than any other ship.

By the desire of the President, he gave an account of the principal damages of the *Victory*. She had one large shot through her main-mast, another shot in the main-yard, the mizens were shot thro', the bowsprit was shot through, the mizen-yard shot in her lower arm, so as to make it necessary to cut it off; the gib-beam shot about three feet below the head, the main-top-sail-yard was shot, two of her lower deck parts were very much broke, the starboard fore-tack-sheet and bowline shot away, the fore-top-mast stay-sail, a part of the bowsprit, six fore-shrouds, the fore-top-mast sheet, seven main-shrouds, five main-top-mast shrouds, four mizen-shrouds, and all the running rigging, very much scattered, &c.

Have you any reason to believe, from any thing you saw, that the Vice-Admiral of the Blue was at any time expected to be cut off?—No.

Do you recollect when the signal for battle was hauled down?—It was while the *Victory* was on the starboard tack that I gave orders for it to be so, having received them from Admiral Campbell.

Was

Was the signal made for the line after the Victory got upon the starboard tack?—Directly.

Was it kept flying till she got upon the starboard tack again?—It was.

Were any ships got into their stations before the Victory wore back again?—The ships that should have led the Victory were not in their stations.

Had I ships enough with me to admit of my advancing faster than I did?—No.

I am charged with having shortened sail, had I ships enough with me to advance swifter?—No.

Did not the main-top-sail, being unbent, enable the ships a-stern of us better to follow us, and was it not unfit for service?—Yes, it did enable the ships a-stern of us better to follow us, and was unfit for service.

Was its being so a public detriment at that moment?—It was not certainly, but a benefit for the previous reason.

Had any ship of my own, or the Blue division, an opportunity with that sail unbent, to get a-head of the Victory before we were to the southward again?—As none did, I suppose none had it in their power, I imagine they would have obeyed the signal, if possible.

Did your people soon replace that main-top-sail so unbent, and in a seaman-like manner?—It was done in little more than half an hour.

After it was so, did not you, and all the officers, notwithstanding the defects you have spoken of, think the Victory fit for action?—By the time it was replaced the rigging was repaired for action, the magazine for powder replenished, and she was as fit for action as possible.

Did you see the French fleet wear?—No.

Had I then force enough to prevent their forming?—No.

When did I wear to the southward?—Half past three.

Did I keep the signal for a line of battle flying after being on the starboard tack, to collect and form?—It was not hauled down.

What sail did I carry on the starboard tack?—After the main-top sail was bent, double reefed top-sails, fore-sails, and mizen-stay jacks.

Do you recollect Sir Robert Harland's coming into the rear while on the starboard tack?—Yes, I do.

Do you recollect my ordering him to lead the rear and form a-head, and by what ship?—I hailed the Milford by your order to go with your commands for that purpose to Sir Robert Harland.

Do you recollect my orders at that time to the Fox, to go to the Vice of the Blue?—I recollect her being hailed by some person from the stern-gallery. The message I did not hear, but perceived her sail to windward, with a press of sail. We understood she was sent to the Vice of the Blue, to order him to come down. [Here he was stopped, as what he was delivering was only from hearsay.]

Where

Where was the Vice of the Blue then?—From two to three points abaft the Victory's weather-beam, about two miles to windward, as near as I can undertake to say.

TWENTY-FOURTH DAY, WEDNESDAY, *February 3.*

AT ten o'clock the Court was resumed when Capt. FAULKNER, of the Victory, was again called.

Admiral Keppel. Did you observe the Formidable's main-top-sail unbent?—Yes, for four hours.

Had she any other damages that you saw?—She had all her masts and yards standing.

Did it ever appear in the course of the afternoon that I had given over the intention of re-attacking?—Quite otherwise.

Did you see any efforts made on board the Formidable, to obey the signal after the Fox went to her?—I neither saw any efforts made before or after the Fox went to her.

Did you see the Formidable repeat the signal for forming the line while the Victory was on the larboard tack?—I did not. I saw the Arethusa frigate repeat it, and she even on the Formidable's lee-bow, very near her.

In the evening of the 27th, what sail did I establish for the night? Two double-reefed top-sails, fore-sail, mizen, mizen-stay-sail, and mizen-top-sail, all reefed.

Were the distinguishing lights kept burning all night?—I gave orders that every socket in the lamps should have a candle in it. Added to the common lights of the Commander in Chief, we carried a very good light at the bowsprit end.

Was there any increase of sail during the whole night?—None; no alteration.

Did you see the French fleet bear away and go off in the night?—No. There were some rockets thrown between ten and eleven; and then I came out to the gallery, and saw the French fleet in the same position as before. I was on the quarter-deck four or five times in the middle watch, and still saw lights in different places to leeward.

In the morning of the 28th, what part of the French fleet were seen?—I saw no more than three sail; the northern-most of which I took to be a line of battle ship; the southern-most a large frigate; and the middle-most a small frigate.

Did I send any ships to chase them?—The signal was made for the Prince George, Bienfaisant, and the Elizabeth, to chase to the north-east.

Was it not soon afterwards discovered, that the Prince George and Elizabeth were too much crippled for chasing?—They hailed the Victory, and accounted to the Admiral for their not carrying more sail.

If I had pursued the French with all my fleet in the condition we then were, was there any probability of our coming up with them before they reached Brest, the wind and weather as it then was?—Not the smallest; if there had, I am sure the Admiral would have done it.

How many ships were there made signals for setting up rigging?—I did not count them; but there must have been 12 or 15 at least.

You have heard all the articles of the charge read; I desire you to state any instance, if you saw, or knew of any, wherein I negligently performed my duty on the 27th and 28th of July?—I cannot state any instances to this Court, wherein the Admiral did not conduct himself like a brave and an able sea-officer.

You were sent with my dispatches to the Admiralty?—I was.

Had you not a message from me to Lord Sandwich?—I had; and I beg leave to read it. “Give my compliments to Lord Sandwich, and tell him, I have more to say to him than I think is proper to put in my public letter; and, if it is his Lordship’s pleasure to ask me any questions, I am ready to wait on him.”

Withdrew.

CAPTAIN STONEY, late First Lieutenant of the Victory.

Admiral Keppel. Had you the morning watch on the 27th of July?—I had.

Do you recollect the signal being made for several ships of the Blue division to chase to windward?—I do.

Do you recollect how the Vice-Admiral of the Blue bore at that time, with respect to the Victory?—About a point, or a point and an half, before the lee-beam, and about four miles distant.

What watch had you in the evening of the 27th?—The first.

What sail was the Victory under during your watch?—Fore-sail, double-reefed fore and main-top-sails, the middle sheet was hauled off, she scarcely steered before for want of sail abaft.

Did your top and other distinguishing lights burn well?—They did, the lanthorns being frequently wiped and cleaned for the purpose.

Did you see any rockets thrown by the French fleet into the air?—I did, nearly at eleven.

Did you not see several lights to leeward after that?—I did, I saw some flashes which I took for squibs also.——Withdrew.

LIEUTENANT CALDER, of the Victory.

Admiral Keppel. Do you remember a message being sent by the Fox, to the Vice-Admiral of the Blue on the 27th of July?—I do.

Can you recollect what time of the day it was?—From the height of the sun, I should suppose it to be between four and five.

Were the people at your quarters all in obedience, and alert?—They were. [Withdrew.]

The

The Hon. Capt. BERKELEY, late Lieutenant of the Victory.

Admiral Keppel. Do you remember the time of the day when the Fox was sent to the Formidable?—I came upon deck and asked the Quarter-Master what o'clock it was, he told me it was after one bell, or five o'clock. I then was shewn the Fox standing to windward to the Formidable, with a message from the Admiral.

What watch had you in the night of the 27th?—The middle.

Did you see the lights of the French fleet during your watch?—The officer that I relieved shewed me the French lights about three points abaft the beam; I kept my eye upon them the whole night, but when day light broke, I only perceived two ships where the lights had appeared, and a third ship a-stern of them.

What sail did the Victory carry during your watch?—Double-reefed fore and main-top-sails, fore-sail and mizen. She carried her helm a-lee almost the whole watch.

Were the distinguishing lights kept burning all night?—They were particularly so; there were more lights added that night than had been on any night before. I went myself often to see that the stern lights were kept in proper order.

Were the people in good order at your quarters, sober, obedient, and alert, through the whole day?—They were, Sir, particularly so; more so than I have seen in any ship I have before sailed in.

Withdrew.

Sir JACOB WHEAT, Lieutenant of the Victory.

Admiral Keppel. Do you remember my sending the Fox to the Vice-Admiral of the Blue?—I remember it perfectly well; I stood by the Admiral on the starboard side, when he ordered the frigate to go and acquaint the Vice-Admiral, that he only waited for him and his division to come down into his wake to renew the action.

What time was that?—I cannot speak to minutes, but it was about five o'clock.

Were not the people under your command in good order, sober, and obedient, and did they not behave to your satisfaction?—Perfectly so. [Withdrew.]

Capt. Sir JOHN LINDSAY, of the Prince George, was carried into Court, and sat during his examination.

Admiral Keppel. From my first seeing the French fleet, to the moment I brought them to action, did they shew an uniform intention of coming to action, or did they avoid it?—On the close of the evening of the 23d, they had got about twelve ships formed, then stood to leeward, and next morning they were seen to windward; the Admiral made the signal for a general chase, and if they had had any intention of coming to action, they would not have suffered two of their best ships to have been separated; and after that they carried a pressed sail, and did all they could to avoid us.

Did

Did I do the utmost in my power as an officer to bring them to action on those days?—The Admiral carried as much sail as the fleet in a collected body would admit of; and if he had continued in a line of battle, they would have, in a very short time, got out of sight of us by their superiority of sailing.

If you had commanded a British fleet in the situation the French fleet were in, would you have hesitated a moment in coming down to action on either of those days?—I think an officer who would have hesitated one moment, would have been unworthy any command in the British fleet.

When the signal was made for the leeward ships to chase, was there any greater indication of the French fleet intending to come to action than on the preceding day?—There was not.

What in your judgment was the object of the signal for chasing, and do you think it was a proper one, under the circumstances in which it was made?—It was with the intention of bringing up the leeward ships to close with the center; and I apprehend, if it had not been made, a great part of that division would not have come into action at all.

What in your opinion would have been the consequence, if I had formed the line in the morning, instead of bringing up the leeward ships to chase to signal?—As the French fleet constantly avoided us, it must have given them the power of escaping entirely, and I am clearly of opinion, that we should not have exchanged a shot with them that day.

Was not your getting within reach of the enemy very sudden and unexpected, from the shift of wind?—After we got upon the star-board tack, the wind changed two points, which enabled us to lay up for them; and it occurred to me, they had tacked their whole fleet together; their rear was obliged to bear down to get into the wake of their van; it was so unexpectedly that I had but just got my long-boat cut away from the side before the enemy fired upon me.

What would have been the consequence if I had formed the line of battle at this time?—It would have thrown the fleet into such confusion, that if the enemy had bore down to the attack, it might have been attended with very fatal consequences.

As I was charged with having advanced to the enemy, and made the signal for battle without forming the line; I desire you will inform the Court if you think I was justifiable in so doing, under the circumstances I then was?—There was no alternative. You must either advance and attack the enemy without forming the line, or not attack them at all; to me it was a very animating sight; it appeared bold, daring, and manly, and becoming the character of a British seaman, who felt his superiority over an enemy that he had before beaten. The success justified the measure, and threw the enemy into such confusion, that I found two Admirals ships close to each other, which could not have been their situation in the line, and fired over three ships that were a-breast of each other.

Did I make the signal for line of battle as soon as I had wore, after passing the rear of the enemy?—As soon as the *Victory* got upon the starboard tack.

I am charged with having stood to a great distance beyond the enemy before I wore; I desire to know of you, who must know, as you were the first ship that wore after me, if the fact be true?—The *Victory* wore before any other ship was ready to follow her; I was obliged to pass and wear under her stern. It appeared to me to have been done with great expedition.

Was the signal for the line of battle the properest signal I could make to collect the fleet together?—I know of no signal so proper, and which every officer piques himself on paying so prompt an obedience to.

I am charged with shortening sail when advancing towards the enemy; I desire to know if I had a sufficient force collected to admit of my advancing further than I did?—There were only three or four ships near the *Victory*. The Vice-Admiral of the Red was advancing, but not with a sufficient force to enable him to re-attack the enemy.

Did you see the French fleet near, and begin to form their line on the starboard tack?—I did.

Had I a sufficient force collected to prevent their forming?—If the Red division had advanced, they might have suffered a great deal before the others could have come up to support them. It would therefore have been highly improper to have attempted it.

I am charged with wearing at this time, and standing directly from the enemy. I desire you will explain this manœuvre to the Court?—The French, when they first drew out their line, stood towards the centre, but the Vice-Admiral of the Red, placing himself between the Admiral and them, forced them to relinquish their design. They then bore down to cut off some of our disabled ships to leeward. The Admiral then wore, and stood under an easy sail to protect those ships.

Did I make every necessary signal to form the line, and collect the fleet on the starboard tack?—Every signal, I think, that could be made on the occasion.

What sail did I carry?—Top-sails; the fore-sail I am not certain of; the *Prince George* had only her top-sails.

Was not the sail I carried necessary for the protection of the disabled ships; and could the sail I carried possibly prevent the Vice-Admiral of the Blue from coming into the line?—If the *Victory* had carried less sail, it would have been difficult for the other ships to have been kept in the line; and it did not appear it could prevent any ship from getting into her station.

Admiral Montague. You have said that the *Prince George* had only her top-sails set; were they reefed?—They were double-reefed, and the fore-top-sail was not set.

Did

Did not the easy sail I carried permit the French fleet to range up with me?—It did.

Had this manœuvre, as you have stated it, the least appearance of a flight?—Not the least.

Could not the French fleet have attacked the British at any time they thought proper?—It was in their power to do so all the afternoon.

At what distance was the Vice-Admiral of the Blue from his station, and how did he bear from you?—At that time I was not in my station, having placed myself a-head of the Victory, expecting an inverted line would have been formed. On the Vice-Admiral of the Red's going a-head, my signal, as well as the Bienfaisant's, were made to resume our station. After I had got a stern, I observed the Vice-Admiral of the Blue about two miles to windward, and point abast our weather-beam.

What course must the Vice-Admiral of the Blue have steered to have got into his station?—Nearly afore the wind.

Did any thing appear to you to prevent his coming down?—He had then his fore-top-sail unbent; and it appeared to me he could have made more sail.

Did he make any visible effort that you saw to come into the line?—I saw none.

What time was his fore-top-sail unbent?—About half past three, and continued so till sun-set.

Did you see him repeat the signal for the line of battle?—No.

Can you assign any reason why the French fleet were not attacked that afternoon?—I suppose if the Vice-Admiral of the Blue had led down his division into the line of battle, the French fleet would have been re-attacked.

You think, then, I should have renewed the attack, if the Vice-Admiral of the Blue had come down?—I certainly do.

You have heard the fifth article of the charge, wherein I am charged with not having pursued the French fleet. I desire you to state to the Court all that you know of that sail?—The Prince George's signal, the Elizabeth's, Bienfaisant's, and Duke's, were made to chase. The Prince George was so much shattered in her masts, she was not able to make sail; the signal was therefore made to call her in, the whole fleet appearing so much crippled, that the chase could not have been continued with any probability of success; nor was there the least probability that they would have got up with the French before they reached Brest harbour; at the same time it might have been attended with great danger, to have brought the fleet upon a lee-shore, in this crippled situation.

Sir John, your station being near to me, and which you preserved all the time that we were in pursuit of, and engaged with, the French fleet, it gave you an opportunity of seeing objects in the same kind of view with myself; I therefore desire you to state to the Court any

instance wherein I negligently performed my duty on the 27th or 28th of July?—I can state no such instance, because the Admiral fulfilled his duty in every respect. I had the honour of serving under his command last war, and had such strong proof of his bravery, knowledge, and ability, as pointed him out to me as one of the greatest sea-officers this country has ever produced; and the whole of his conduct in his late command, has served to confirm me in that opinion.

Cross-Examination by Sir Hugh Palliser.

I ask you whether, if those ships, whose signals had been made to chace, had been permitted to remain with their Admiral, they would not have gone into action with their Admiral, have supported each other, and have done more signal service?—Several of the ships whose signals were made, were to leeward of the Vice-Admiral, therefore if the signal had not been made, they would not have taken the advantage of change of wind, and therefore they could not have come into action.

Do you think that at the distance you were at, you can judge better of the situation of those ships than the Captains of the division themselves?—I certainly cannot.

The Vice-Admiral asked him a variety of questions, which served to prove, that it would have been highly improper for the Admiral to have wore sooner than he did, had it been even practicable, since it would have been attended with great confusion, as even in a fleet not at all disabled in their masts and rigging, it is very dangerous, when they get into confusion, to keep them from running aboard of each other. If the ships that remained in action had wore, they must have been raked by the enemy in the operation of wearing. Among the many curious questions that the prosecutor asked, the following was one:

If you had been coming along the French line, and had observed the ships that had passed a-head of you wear, and renew the attack with the enemy's rear, would you not have run the hazard of being raked in wearing to have got upon the other tack?—After some explanations, the honourable Baronet declared he understood the question, but he could not conceive that such a case could exist. For no officer could think of wearing and re-attacking the enemy, while a part of his own fleet was standing on the opposite tack, still engaged with the enemy. But, continues he, if such a case should arise, I certainly would undergo the hazard, for the sake of continuing the engagement.

If the ship that was most cut in her rigging, and had all her bracing and bowlings but one cut, could wear immediately after coming out of action, could not any other ship do so?—I suppose one man can do as much as another.

Did not the ships of the Blue division suffer more than any other equal number of ships in the fleet?—I can only speak from my own observation, and they did not appear to me to have suffered more than the other ships; I believe the Prince George suffered as much or more than any other ship in the fleet.

Could the ships that came latest out of action, and had received more damage, be expected to come as soon into the line as the others?—Not if they had received more damage than the rest.

Did the Admiral intend to renew the engagement at seven or eight o'clock in the evening, at the risk of a night engagement, and preferring the ships that came last out of action, and were the most disabled?—I certainly thought the Admiral intended to renew the engagement, when I got a-stern of him in the afternoon, but I cannot say that he intended to do so at eight o'clock at night. I should think he would not then have hazarded an engagement.

The Honourable CAPTAIN WINDSOR, of the Fox.

Admiral Keppel. When you received orders from me to go to the Formidable, was the Fox obliged to get on the contrary tack, and could you fetch the Formidable?—She was obliged to go on the other tack, and could not fetch the Formidable.

Did the Fox carry much sail?—Fore-sails, top-gallant-sails, main-top-mast stay-sails, &c.

Did the Formidable return you any cheers after you, as you have said before, returned her cheer?—I think she did.

What part of the ship was the last cheer you received given from?—I think the fore-castle.

Sir Hugh Palliser. What part of the ship was the first cheer given from?—The main and mizen shrouds. [Withdrew.]

LIEUTENANT BERTIE, of the Fox, was next called.

Do you remember the Fox being called to the Victory on the afternoon of the 27th?—I do.

Do you remember the message given to Capt. Windsor?—I do.

What was it?—The Admiral directed Captain Windsor to go to Sir Hugh Palliser, and let him know it was his orders that Sir Hugh Palliser should come down into the Victory's wake, and that the Admiral only waited for him and his division to renew the attack.

What time was it?—Between five and six, I think.

Was the message delivered to Sir Hugh Palliser correctly?—Capt. Windsor delivered it twice himself; not contented with that, he ordered me to take the trumpet, which I did, and repeated it twice more; the answer each time was from the stern gallery, "Sir, I understand you perfectly."

Was the message you delivered the same as I gave you?—Word for word, I believe.

Standing from the Victory, were you able to fetch the Formidable?—No, she was too far on the weather-quarter, we were obliged to tack.

Had you much sail?—A press of sail; the top-gallant sails were out, &c.

How

How fast did you sail?—I should suppose from six to eight knots.

How long was you going?—I think about half an hour.

President. Whose voice did you think it was you heard from the stern-gallery?—I fancy Sir Hugh Palliser's.

Did you, after having your answer, observe any different manœuvres on board the *Formidable*?—She manned ship to cheer us.

Any alteration in her sail?—I don't recollect.

Was she then under sail?—I think her fore-sail was up, &c.

Admiral Keppel. By five or six, do you mean the hour when the *Fox* received or delivered my message?—When the *Fox* received it.

Mr. COURTNEY, a youth, midshipman of the *Fox*, called.

Court. How old are you?—Between 16 and 17.

Did you ever take an oath?—No.

Admitted as a witness.

Admiral Keppel. Had you not the charge of a prize to carry into port, taken by the *Fox*?—Yes.

Was you on board the *Fox* during the action on the 27th?—Yes.

Do you remember being hailed by the *Victory* on the 27th in the afternoon?—Yes.

At what time?—Between five and six.

What message was given you to take to Sir Hugh?—To go under the *Victory's* stern, and tell him, that the Admiral only waited for him, and the ships of his division, to come down into his wake to renew the action.

Was that message delivered exactly to Sir Hugh Palliser?—Yes.

Do you know whether there was an answer?—Yes, but I do not recollect the words.

[Admiral Keppel here desired Sir Hugh's letter, published in the *Morning-Post*, and acknowledged by Sir Hugh, might be read. Sir Hugh Palliser objected to it, saying, he was ready to answer to the Admiral for that in another place. Admiral Keppel, in a tone which shewed his contempt of Sir Hugh Palliser, answered, he never would call on him privately, and that he believed the decision of the Court would furnish him with the best answer possible to that publication. The Court interposed, and put an end to the altercation.]

CAPTAIN MAITLAND, of the *Elizabeth*, declared generally, that on the 24th, 25th, and 26th of July, the French did every thing to avoid, and the British Admiral every thing to bring on, an action, and that if he had commanded the British fleet, he should not have hesitated to attack the French as the Admiral did.

Admiral Keppel. How near when you began to fire was you to the *Formidable*?—In the latter part of the action within two or three cables length of her. There were two or three other ships a-stern of

of her. I cannot, from my other engagements, ascertain the precise distance.

Were the ships in the rear near enough to succour you?—We found no inconvenience from the want of succour. They could not be far a-stern of us.

Did you pass the enemy's van before or after the Formidable?—At a quarter past one we were close on the Formidable. One of our midshipmen called out a ship was coming on board us, when the smoke cleared. It was the Formidable. She was then engaged. I was obliged to shoot before her, or must have fired through her to annoy her.

Did it ever appear to you she was in danger of being cut off?—I did not think the Vice of the Blue ever was in any such danger.

Did you see the French make up to five ships that were to leeward seemingly repairing damages?—Yes.

While the British and French fleets were on the same tack on the afternoon of the 27th, had it on the part of the English an appearance of flight?—No, very contrary.

For this opinion he gave variety of reasons, which shewed him to be an attentive and able seaman. He afterwards deposed, that the French stole away in the night; and that with the ships of the British fleet, they could not, in his opinion, have been overtaken the next morning, (if pursued as soon as they were seen) before they would have reached the port of Brest.

Admiral Keppel. Did you observe or know of any thing in my conduct as Commander of the British fleet, which indicated a neglect of my duty?—I did not; but, on the contrary, thought you did every thing in your power as a gallant officer to serve your country.

TWENTY-FIFTH DAY, THURSDAY, *February 4.*

CAPTAIN LAFOREY, of the Ocean, was called by the Admiral.

Admiral Keppel. When was the French fleet first seen?—The 23d of July.

Did the Admiral use every means, as an officer, from that time to the 27th, to bring them to action?—I think he did.

Did you judge, from the motions of the French, that they were inclined to come to action, or to avoid it?—I thought they studiously avoided it.

If you had commanded a British fleet, in the situation the French then were, would you have hesitated one moment to go down to action, on account of the wind and weather, as you know it to have been then?—I should not have thought myself justifiable if I had omitted any one period of that time to have borne down and attacked them.

Did

Did they shew any more intention of bringing on the battle on the 27th, than on the preceding days ?—They did not.

Did you see, on the morning of the 27th, a signal for several ships of the Vice-Admiral of the Blue's division to chase to windward ?—I did.

Was the Ocean on the weather-quarter of the Formidable at that time ?—She was wide on the weather-quarter, and a great way a-stern.

Was it your intention to have edged down to the Formidable at the time the signal was made ?—I had kept quite away about a point to get nearer my division, and I hauled my wind directly when the signal was made.

If the signal had not been made, would you have been able to get into action as soon as you did, unless the wind had changed two or three points to the westward ?—I should not have got into action as it was, had not the wind shifted to the westward ; for the Formidable weathered me out of gun shot when she changed to the starboard tack.

Did not the Formidable, and the other ships of that division, when signals had not been made to them, crowd all their sail to close with the center, which made it needless to extend that order to them ?—I saw the Formidable do so.

If I had formed the line on the 27th in the morning, do you think I could have brought the French fleet to action that day ?—We could not, unless they had bore down to us, which they did not shew any disposition to do.

When you got into action with the French fleet, how was your ship situated with respect to the Formidable ?—I brought up under the Vice-Admiral's lee-bow, I had just room to engage between him and the ship a-head of him.

When did the Ocean come out of action ?—At half past one.

At what distance was the Formidable from the Ocean when you came out of action ?—About two or three cables length.

Did the Formidable appear in danger of being cut off ?—I think not. The French fleet passed on the opposite tack, none of them stopped to engage him, and none of them returned to engage him.

At what time did the Victory pass you on the larboard tack ?—About half an hour after I came out of action ; there were no ships a-head, and I don't recollect there were any a-stern of her.

How soon after was it before your ship was in a condition to wear upon the larboard tack ?—I wore about half past two.

Your ship then was in a condition to have obeyed the signal for the line of battle ?—Yes.

What then prevented you from doing so ?—I did not think myself at liberty to go down to the line of battle before the Vice-Admiral, in whose division I was. I waited in constant expectation of his leading down his division in obedience to the Victory's signal, until at last I bore down the Ocean, in consequence of my own signal being made on board the Victory at seven o'clock.

How was you situated from the Vice-Admiral at that time?—Not far distant from him on the weather-quarter.

When you bore down, how far from the wind did you lead to get into the line?—I bore pretty large to give room to the Admiral's rear, and the Vice-Admiral's van, to place themselves between me and the Admiral.

Can you recollect what sail the Victory was under in the afternoon?—I cannot.

Do you know how many knots the Ocean went upon wind?—About ten, she went about two knots, and after that between two and three knots. I was obliged to haul my main tack on board about ten, we had fallen so much down upon the French line.

Admiral Montague. What sail had you set before ten o'clock?—The three top-sails and fore-top-sail, close reefed.

After the Admiral stood to the Southward on the starboard tack, and although the French were a-stern of him, had it the appearance of a flight?—Not in the least.

Did the Vice-Admiral in the afternoon repeat any signal that was made from the Victory?—I saw the blue flag at his mizen peak.

Before or after your signal was made on board the Victory?—Before.

Did the Vice-Admiral, when he made that signal, make any effort to bear himself down to the Victory?—I did not see any.

Did you see any movements of the Victory that gave you an idea that the Admiral did not intend to renew the action that afternoon?—I did not.

If the Vice-Admiral of the Blue had led down his division at five or six o'clock, was there not day-light sufficient to have renewed the attack; and did there seem any other reason that prevented it?—I think if the line of battle had been formed by six o'clock, there was day-light enough to renew the action; and I do not recollect any other impediment.

Admiral Montague. If the French had been disposed to renew the action, might they not have done so at any time of the afternoon?—I am convinced it was in their power to have renewed the action.

Was the French fleet in the morning of the 28th seen on board the Ocean; or had they run off in the night?—I saw but three sail in the morning, one of which appeared to be a line of battle ship.

If I had chased towards Ushant, in the morning of the 28th, in the situation our masts, yards, and rigging then were, and with the wind and weather as it then was, was there the smallest probability of coming up with the French fleet before they had reached Brest?—Not the least probability whatever.

How did Ushant bear on the 28th at noon?—It bore E. S. E. half East, twenty-three leagues distant.

You have heard all the articles read, I desire you therefore to state to the Court any instances, if you saw or knew of any such, wherein

negligently performed my duty on the 27th or 28th of July?—I can state no such instance. I was convinced at that time that Admiral Keppel left no means uneffected to bring the French to action, or of renewing it afterwards. I have remained in these sentiments invariably ever since.

Cross-Examination by Sir Hugh Palliser.

Was you near the Victory when the signal was made?—No, I was to leeward, and a-tern.

Where was your station upon the larboard tack?—On the Vice-Admiral's lee-quarter.

Where is the line a-head?—A-head of the Vice-Admiral, and next to him.

What ship was next a-head of you?—The Egmont, and she was so close to the Formidable that I was several times baulked in my fire, and run the hazard of being aboard of the Egmont, from the first to the last of our being in the engagement.

Sir, as it has come out in the course of the evidence on this trial, that the signal was made for seven ships of my division to chase, how many did that leave with me?

On the Admiral's objecting to Sir Hugh's telling a witness what came out in evidence, and cross-examining thereon, an altercation took place between the accuser and the accused, upon which Admiral Montague moved the Court to withdraw. On their return, the court agreed, that the prosecutor in cross-examining is to confine himself to such facts as have fallen from the witness on his first examination, and not to dive into new matter.

Admiral Arbuthnot. The mode of conducting a trial is for the prosecutor to call all the evidence he thinks proper to establish his charges, and the prisoner has a liberty of cross-examining them as to what they have delivered in evidence; then the prisoner calls all the proof he can of his innocence, and the prosecutor examines those witnesses to what they have said, and nothing farther.

Sir Hugh Palliser. I should suppose I have a right to ask any questions about ships of my division.

Admiral Montague. I am willing to sit here until the day of resurrection to hear either party; but, for God-sake, keep to the point.

Captain Cranston. I apprehend the prosecutor cannot examine the witness in support of the charge, as he has done calling evidence.

Did the Ocean proceed in the same tack until she passed the Victory?—She did pass on the starboard until she passed the Victory on the larboard tack.

When did you see the signal for the line on board the Victory?—When we passed each other on different tacks.

Where would the station of the Ocean have been agreeable to that signal?—A-head of the Formidable, who should have been a-head of the Victory.

Did

Did the whole of the Vice of the Blue's division continue to pass the Victory after the action, while they were upon the starboard tack?—I cannot say.

Admiral Arbuthnot. Was your ship at the time she wore, in a condition to go immediately into action, and keep her station in the line?—I don't recollect any impediment to the Ocean going into action after she had wore.

Sir Hugh Palliser. When you came out of action, was you not in condition to engage immediately?—The Ocean did not receive so much damage, as two frigates would have given in half an hour. We were scarcely warmed with what we had.

Could you have gone into action immediately?—Yes, we could have fought, but could not manœuvre the ship so as to wear and stay directly, as our sails and rigging were much cut.

Admiral Arbuthnot. As an able and gallant Officer, I ask you whether, if I had had the command of a squadron, and you a pennant under me, and had seen, upon coming out of action, any omission in my conduct, which all mankind are liable to, should you not have thought it your duty, for the honor of the service, (my honor being out of the question) to have informed me what your opinion was, and how I could have remedied it?—Most certainly.

Sir Hugh Palliser. Is it not equally proper for the superior to inform the inferior if he sees any omission?—I think the obligation is reciprocal.

CAPTAIN BRADLEY, of a Fire-ship.

Admiral Keppel. When did you pass the rear of the French fleet?—About 20 minutes after one.

Did you observe the Vice of the Blue at that time, and where was he?—I was a little before his lee-beam, and just out of gun-shot.

Had you observed him in danger of being cut off?—I had not.

At the time the Vice-Admiral of the Blue came out of action, how many ships were there a-head or a-stern of him, and how near were they?—The Worcester immediately a-stern, and two ships were a-head of him, the Worcester appeared to be close.

How far was the Victory from you when you observed her at the starboard tack?—About a mile.

CAPTAIN EDWARDS, of the Sandwich.

Admiral Keppel. Could not the French have engaged the English fleet on the 24th, if they had thought proper?—Most certainly.

Did I not form the line on the first day I saw them, and make signal on the second day for that purpose?—You did.

If I had pursued the French in a line of battle, could I have preserved my nearness to them?—No.

Did I use every means to bring them to action?—Yes.

Did it appear from their motions, that they were inclined to come to battle?—I judged that they wished to avoid it.

If you had commanded the British fleet in the same situation, would you have hesitated one moment to give them battle?—No.

Could they not have brought us to action on any of these days? Most certainly, having the advantage of the wind.

Did they shew any greater disposition of bringing to action on the 27th, than on the preceding days?—No.

What would have been the consequence if I had formed the fleet into a line of battle on the 27th, instead of closing with them as I did?—No engagement.

With what ship did you engage?—The second ship a-head of the French Admiral fired upon me; I ordered our fire to be reserved for the Admiral, but the men, from their impetuosity, begun with the ship next a-head of the Admiral.

Was the French fleet in a regular well-connected line of battle?—No.

Did you observe one of the French ships with her main-yard carried away by the Prince George or the Sandwich?—I did see one of their main-yards carried away, and Lieutenant Buchanan, who commanded on the lower-gun deck, told me he flattered himself he had pointed the gun that had done it. I saw another ship with her mizen-yard half down, and another with her top-sail-sheet cut.

Did you see the signal to wear soon after coming to action?—I did not, but I observed the Admiral to wear.

Was the Sandwich in a condition to follow the Victory, after she had wore and got upon the larboard tack?—She was not.

Did you observe the Victory wear back to the starboard tack, and what was your situation?—I did, and we were stopping our leaks; I ordered the ship to be wore, but the carpenter told me, the damages the ship had received were such, that he could by no means repair them, if we wore and laid our head the other way. I asked him if they were material; he said they made much water, I therefore ordered him to make the utmost dispatch, and let me know when he had completed them.

Did you observe any other ships about you disabled at that time?—Yes, the *Courageux*, the *Egmont*, *Robuste*, and *Ramillies*.

When the Victory wore again, did you see her point towards you and the other disabled ships?—She did, from the wind.

Did that course serve to make her near the enemy, or increase the distance from them?—Certainly to near the enemy. For at four o'clock when my damages were repaired, we wore within random shot of the enemy, hauled our wind, and joined the Admiral.

Did you observe the Victory at this time with any signals flying?—At four I observed the signal for ships to bear down to the Admiral's wake. At three quarters past four I saw the signal for the line of battle a cable's length asunder. At half past five a signal for three ships that were out of their station. Three quarters past six, signals for several ships of the Blue division to make more sail. These signals were taken by my watch.

Did you observe what sail the Victory carried that afternoon?—The Victory then seemed to me to have fore-sail and reefed top-sails.

Did the signals and motion of the Victory convey to you any idea that the Admiral did not intend to renew the engagement that afternoon?—By no means.

Had these manœuvres of the Admiral the least appearance or a flight?—No, he was bearing down to them when I passed them, as I have said.

Did you see any of the French fleet on the 28th?—Yes, three sail; one of them appeared to be a capital ship, the others frigates. They were four or five miles distant. The Sandwich was not in a condition to chase.

Did you see any other ships signals made to chase?—I did not, for as they had run away, I had done with my minutes.

Capt. Edwards said, he thought it would have been impossible for the British fleet to have come up with them before they reached Brest. And he concluded his evidence, by saying, he could state no instance of negligence in the conduct of the Admiral, for he knew of none.

The Honourable CAPTAIN WALSINGHAM, of the Thunderer, was then called.

Admiral Keppel. From the 24th, to the moment of bringing them to action, did the French seem to avoid coming to action?—They always avoided it, and you did your utmost to bring them to battle.

Had you commanded, would you have hesitated one moment to have gone down to battle on any of those days, on account of wind and weather?—Not a moment.

What in your opinion would have been the consequence if I had formed a line of battle on the 27th, instead of closing with them as I did?—You never, Sir, could have brought them to action.

What part of the French fleet did you begin the action with?—About eleven or twelve sail from the rear.

Did it appear to you to have been the object of the French fleet to have gone off to windward, without coming to action, if they could have passed the English far enough to windward?—I have no doubt of it.

I am charged with having advanced to the French fleet without forming a line; I desire that you will acquaint the Court if I was justifiable in doing so?—Certainly. You had no other chance of bringing them to action.

I am charged with standing to a great distance beyond the enemy before I wore to stand towards them again; I desire to know of you if the fact be true?—I think you wore very soon. I had some difficulty in following you.

Did I make the signal for the line of battle as soon as I wore?—You did.

Was that the properest signal I could make to collect the ships together?—Without all doubt it was.

I am charged with shortening sail as I advanced towards the ene- my, I desire to know if I had a sufficient force about me to admit of my advancing faster than I did?—Undoubtedly not.

Did you observe me lead down from the wind for the protection of the ships disabled to leeward?—I did, and said to my officers on that occasion, that you bore down very much unsupported.

Was the sail I carried, such as could prevent the Vice of the Blue from coming into the line?—I think not.

What sail had you set to keep in your station?—My top-sails in general, sometimes my mizen-top-sail aback.

Was not that you had for a main-top-sail a mizen-top-sail?— It was.

With the sail you have described, although the French fleet were a-stern, had it the least appearance of a flight?—No, Sir, *I heard the charge with indignation, and I reprobate the idea.*

Did you see the Vice-Admiral of the Red leave the rear to form a-head?—I did.

Was there not day-light at that time sufficient to have attacked the French fleet; and do you not think I should have renewed the fight, if the Vice of the Blue had led his division down?—There certainly was time enough; and as a strong proof that I imagined you intended renewing it that night, my hands were never from their quarters.

Can you assign any reason why I did not attack the French fleet, while there was any day-light?—There was but one, and that was on account of your not being supported by the Vice-Admiral of the Blue.

Did the Vice of the Blue ever make any visible effort to come into action?—I saw none.

How long did you see the Formidable's fore-top-sail unbent?— Four or five hours.

Did you observe any signal from that ship, signifying her distress?—No.

Did you see any ships called for the purpose of changing his ship, that I might know his distress?—No.

Did you see the Vice-Admiral repeat the signal for the line of battle that afternoon?—No.

Did you see the French fleet on the morning of the 28th?—I saw three sail, and I saw your signal to chase.

If I had made the general signal to chase to leeward, was there the least probability of coming up with the French fleet before they entered Brest?—I think not.

State to the Court wherein (if you know of any instance) I negligently performed my duty on the 27th or 28th of July?—I know of none. I have always been taught to look up to you as a brave and gallant officer, a man of courage and ability. I never had the honour to serve under you before, but, prejudiced in your favour as I was, your conduct exceeded my most sanguine expectations.

Admiral Keppel. I beg pardon of the Court; but as notice has been taken of the Thunderer firing into the Egmont, I wish to ask how that happened?—I beg leave to mention, that this was in the heat of action, when we were obscured by smoke, and not by confusion.

TWENTY-SIXTH DAY, FRIDAY, *February 5.*

THE Court resumed at ten o'clock, when the cross-examination of CAPTAIN WALSINGHAM, of the Thunderer, began.

Sir Hugh Palliser. Was the ship you first began to engage a-head or a-stern of the French Admiral?—Many ships fired at me whose shot fell short, and I received the fire of two or three ships that went through my sails, but I believe I did not fire till I came to the Admiral.

Was you a-head or a-stern of the Victory, or upon one side, or how?—I was a-stern of the Sandwich, who was the next but one (the Prince George) to the Victory.

Was you a-head of the Victory, or a-stern in the evening?—When on the starboard tack I was a-head of the Victory.

What time did the Red division quit the station of the Blue?—Before five.

What time did you first observe the Formidable?—As soon as I came out of the action, I went into the stern-gallery, and observed the Formidable, and, upon my word, I was particularly pleased with the manner in which she engaged; it did infinite honour to the officers of that ship. [Withdrew.]

CAPTAIN CLEMENTS, of the Vengeance, called.

Did the enemy, from the 24th to the 27th at noon, shew any design of coming to action?—No.

Did I use every endeavour to bring them to action?—I think you did.

He proceeded to say, that if he had commanded a British fleet, in a similar situation, he would not have hesitated one moment to have gone down to engage them, on account of wind and weather. And it was his sincere opinion, that if the Admiral had formed a line of battle, instead of closing with them in the manner he did, he would certainly, on account of the squally weather, have lost them. That the Admiral had it not in his power, from having no ships to succour him, to advance faster than he did on the larboard tack, to prevent the enemy from forming their line on the starboard tack. That the Admiral's wearing again on the starboard tack was a necessary measure, since it gave his ships time to repair, protected his disabled ships, collected his fleet, was particularly well executed by the Victory, and was so far from carrying the appearance of a flight, that it was wearing to the enemy.

If I had chased towards Ushant, in the situation the fleet was in, with the wind and weather as they were, was there the smallest probability of coming up with the French fleet before they reached Brest?—No, not the smallest.

You have heard all the articles of the charge read: I desire you, therefore, to state to the Court any instances, if you know of such, wherein I negligently performed my duty on the 27th or 28th of July?—I have long had the honour of knowing Admiral Keppel; I have had the highest esteem for him, both as a man and as the best of officers, and I do not think it was possible for more to be done than was done by the Admiral during all the time the French fleet was in sight. [Withdrew.]

CAPTAIN M'BRIDE, of the *Bienfaisant*, called in.

The Captain deposed, that the French fleet was first seen by him, between one and two, on the 23d of July, that the weather did not open till towards seven in the morning of the 24th, when he again saw them N. W. and made a signal to that effect.

Admiral Keppel. Did you not come on board the *Victory* in a small-boat, to inform me what observations you had made?—I did.

What were those observations?—I saw three sail of them considerably to leeward of the others; one had her main-mast gone, another her main-top-sail close-reefed, by which I imagined she was crippled; and as the weather was so close, I considered that the Admiral might not have seen them, which was the reason that I went down to inform him; the three sail I speak of were at least three leagues from the body of the fleet, and other two sail still farther leeward.

What orders did you receive from me in consequence of the information you gave?—The Admiral observed these two ships must be cut off, or the French fleet must come down to support them. I was ordered to acquaint Capt. Maitland, of the *Elizabeth*, to chase those ships, notwithstanding he should make the signal for the line of battle, and we should continue chasing them, unless a particular signal was made to call in the cruizers.

Would the weather at that time permit us to have fought our lower-deck guns?—Undoubtedly, any ship might have fought her lower-deck guns, when I, in a six-oar cutter, could go with the mesage, and keep up with the ships.

Did I soon after make a signal for a general chase, and did it not make a separation of two of their capital ships?—It did.

If the French fleet had intended battle, was not the separation of those two ships a great inducement for them to bring it on?—It undoubtedly was.

He proceeded to say, that the French had all along avoided coming to an engagement; and that the Admiral, by carrying as much sail as his slow-sailing ships could keep up with, did all that an officer could do to bring on a general engagement; and he declared, that

that if he, for his part, had been the senior officer of a fleet, in similar circumstances, he would not have hesitated one moment to have gone down to battle; for if he had, he should not have deserved ever to have set his foot in this country again; that the *Victory*, while she stood upon the larboard tack, towards the enemy again, had not sufficient force either to have attacked the enemy upon wearing, or to interrupt their forming again upon the starboard tack; that he saw the signal for the line of battle a-head hoisted on board the *Victory*, a few minutes after the signal for battle was hauled down.

Did you see the *Formidable* pass the *Victory* on the starboard tack, while I was standing towards the enemy with the signal for the line flying?—I did.

Had she passed the *Victory*, and gone to the southward, before the signal for wearing was made?—She had.

He said, that the operation of standing to the southward, with the sail that the *Victory* and the other ships carried, so far from having the appearance of a flight, struck him as the well-timed manœuvre of a judicious officer, and the only one at that time in his power for collecting his fleet, which were in a very disorderly situation, on account of their damages, to form the line of battle, and to protect five ships that lay disabled to leeward; and Sir Robert Harland's taking a station in the rear, prevented the French from falling upon the British in their dispersed state.

Had not the French the power of attacking us all that afternoon?—If good fortune had placed us in their situation, and them in ours, if we had not destroyed the whole fleet, we deserved to have been sent on board the *Justitia* frigate.

Did the motions of the *Victory* convey to you an idea that the Admiral did not intend to renew the fight in the afternoon of the 27th?—Not in the least.

Can you assign any reason why the fight was not renewed?—I apprehend in waiting for the Vice-Admiral of the Blue, and his division, to come down agreeable to your signal.

If the Vice-Admiral had come down by six o'clock, was there not still day-light enough to have fallen upon the enemy, and obliged them to have surrendered, or to have run away before night?—It would certainly have determined whether they meant to stand their ground or run away, as we had full two hours and a half good day-light after six, at that time of the year.

What distance was the Vice-Admiral of the Blue from his station at five o'clock, and how did he bear from you?—He was upon my weather-beam about three miles.

Did any thing appear to you, to prevent his bearing down?—His fore-top-sail only was unbent; any interior reasons I am unacquainted with.

How long was his fore-top-sail unbent?—Upwards of four hours.

Did he ever make any efforts to come into the line?—None that I saw.

In the evening, he said, the tenth ship of the French van was abreast of him, about two miles to leeward. He only carried close-reefed top-sails, some of them aback during the night, just so much as would give him steerage way, and keep him in his station in the line. The night was very dark, and about eleven o'clock he saw a rocket thrown up, and after that every half-hour, and sometimes oftener, a light was shown, and a flash, like that of a musket, seen till day broke. In the morning he saw three ships, one of which he took to be a line of battle ship, another a frigate, and the third he could not judge of; the ship nearest to him was between four and five miles distant, and there was none between him and them. The signal was made for the *Bienfaisant*, among others, to chase, and he did chase that ship for some time, so that if any other ship had been between him and the French, he must have seen her.

If I had followed you with the whole fleet, in the situation they were then, was there the least probability of coming up with the French fleet before they reached Brest?—I do not think, if the British fleet had not been crippled, there was the smallest probability of coming up with the French fleet, considering the great start they had a-head, and the short way they had to go, it being only, by my reckoning, 23 leagues to Brest; and considering that our ships were mostly more than a twelve-month old, and some of them two years.

Captain M^rEride, you have heard all the articles of this charge read; I desire you to state to the Court any instances, if you saw or know of such, wherein I negligently performed my duty on the 27th and 28th of July?—I know of none; and I think Admiral Keppel realized every favourable opinion that this country ever entertained of him, by his conduct on that occasion.

Cross-Examination by Sir Hugh Palliser.

Is it possible for cutters to pass from ship to ship, when ships could not open their lower-deck guns?—It is possible, but that was not one of the days.

With what ship did you engage?—Captain M^rEride observed to the Court, that he had been summoned by the Vice-Admiral, as well as the Admiral, to give evidence; and he conceived, that if he had had any questions to ask relative to his charge, he ought to have called him before; but now that he had closed his evidence, he thought he could only cross-examine him on his former evidence. At the same time he said, he had not the smallest objection to any question that he could ask. The Admiral saying the same, the question was admitted, and he answered, that he engaged between the *Valiant* and the *Foudroyant*.

Did you see the *Duke*, or any other ship, fire into the *Foudroyant*?—I saw the French fire into her; I saw no other ship do so.

The Honourable CAPTAIN JOHN LEVESON GOWER, of the *Valiant*, called.

He deposed, that the Admiral, in the morning of the 24th. made the

the signal for the general chase, and the wind was such as enabled him to go under his top-gallant sails. That the Admiral again made the signal for the line in the afternoon of that day, and invariably pursued the French fleet from that time to the moment he brought them to action, using every endeavour to get up to them, while they run off as fast as they could. For his own part, he would not have hesitated one moment, on any of these days, to have brought them to action. That there was no greater indication on the morning of the 27th of the French intending to come to action, than on the preceding days; and it was his sincere opinion, that if the Admiral had formed the line that morning, instead of pursuing them as he did, the French would have got clear off, without being brought to action. That the Admiral did not stand to a great distance beyond the enemy before he wore. The charge was not true, for he wore in ten minutes after the firing ceased from the Victory, or thereabouts. That he made the signal for the line of battle immediately after he had wore, which was the properest signal he could make for collecting the fleet together. That the Admiral had not a sufficient force to admit his advancing faster towards the enemy than he did. The Valiant was not in a condition to make sail for near an hour, after she came out of the fire, and there were several ships southward of the Valiant, and still more a-stern of the Victory. So that the Admiral had not either a sufficient force collected to re-attack them, or to prevent them forming. That the enemy, instead of standing after the British fleet as the charge states, edged away to five disabled ships to leeward, which obliged the Admiral to bear down, to prevent their being cut off; and as soon as he came into his station, he bore down directly to these ships. That the Admiral made every necessary signal, while on the starboard tack, to collect his ships and form the line, and carried only double-reefed top-sails and fore-sail, which enabled the van of the French fleet to range up with him, under their top-sails, and at times sailing even with their mizen top-sails a-back. That the Valiant carried but her top-sails to preserve her station. And that this manœuvre had not the appearance of flight in the smallest degree. The French fleet might have attacked the British in any part of the afternoon. The Vice-Admiral of the Blue was broad on the weather-quarter, about two and a half, or three miles from the Valiant, and except that his fore-top-sail was unbent, he saw no reason that prevented him from coming down to the line, since his masts and yards were standing. He knew not when the fore-top-sail was bent, though it might have been so between seven and eight o'clock, but when he had given over all hopes of returning to action, he troubled his head no more about him. He saw no signal made on board the Formidable, to acquaint the Admiral of his disability, nor any signal repeated but the Blue flag at the mizen-peak. The plain reason that the action was not renewed, was, that till four o'clock, very few ships were with the Victory, and after that till night, the Blue division did not come down into the line.

Admiral Keppel. Then do you believe, that if the Vice-Admiral had lead his division down, agreeable to signal, I should have re-

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The Honourable CAPTAIN JOHN LEVESON GOWER, of the *Valiant*, called.

He deposed, that the Admiral, in the morning of the 24th, made the

the signal for the general chase, and the wind was such as enabled him to go under his top-gallant sails. That the Admiral again made the signal for the line in the afternoon of that day, and invariably pursued the French fleet from that time to the moment he brought them to action, using every endeavour to get up to them, while they run off as fast as they could. For his own part, he would not have hesitated one moment, on any of these days, to have brought them to action. That there was no greater indication on the morning of the 27th of the French intending to come to action, than on the preceding days; and it was his sincere opinion, that if the Admiral had formed the line that morning, instead of pursuing them as he did, the French would have got clear off, without being brought to action. That the Admiral did not stand to a great distance beyond the enemy before he wore. The charge was not true, for he wore in ten minutes after the firing ceased from the Victory, or thereabouts. That he made the signal for the line of battle immediately after he had wore, which was the properest signal he could make for collecting the fleet together. That the Admiral had not a sufficient force to admit his advancing faster towards the enemy than he did. The Valiant was not in a condition to make sail for near an hour, after she came out of the fire, and there were several ships southward of the Valiant, and still more a-stern of the Victory. So that the Admiral had not either a sufficient force collected to re-attack them, or to prevent them forming. That the enemy, instead of standing after the British fleet as the charge states, edged away to five disabled ships to leeward, which obliged the Admiral to bear down, to prevent their being cut off; and as soon as he came into his station, he bore down directly to these ships. That the Admiral made every necessary signal, while on the starboard tack, to collect his ships and form the line, and carried only double-reefed top-sails and fore-sail, which enabled the van of the French fleet to range up with him, under their top-sails, and at times sailing even with their mizen top-sails a-back. That the Valiant carried but her top-sails to preserve her station. And that this manœuvre had not the appearance of flight in the smallest degree. The French fleet might have attacked the British in any part of the afternoon. The Vice-Admiral of the Blue was broad on the weather-quarter, about two and a half, or three miles from the Valiant, and except that his fore-top-sail was unbent, he saw no reason that prevented him from coming down to the line, since his masts and yards were standing. He knew not when the fore-top-sail was bent, though it might have been so between seven and eight o'clock, but when he had given over all hopes of returning to action, he troubled his head no more about him. He saw no signal made on board the Formidable, to acquaint the Admiral of his disability, nor any signal repeated but the Blue flag at the mizen-peak. The plain reason that the action was not renewed, was, that till four o'clock, very few ships were with the Victory, and after that till night, the Blue division did not come down into the line.

Admiral Keppel. Then do you believe, that if the Vice-Admiral had lead his division down, agreeable to signal, I should have re-

renewed the action?—From your very spirited behaviour before that, I have not a doubt of it.

If I had chased towards Ushant in the morning of the 28th, with the fleet in the situation they then were, was there the smallest probability of my coming up with them before they reached Brest?—I think not.

Your situation being nearest to me in the pursuit of the enemy, and in action, which gave you an opportunity of viewing actions in nearly the same point of view with myself, I desire you to state to the Court any instance, that you saw or know of, wherein I negligently performed my duty on the 27th and 28th of July?—I don't know any such instance. I then thought, and I now think, that your whole conduct was spirited, able, and great.

Cross-Examination by Sir Hugh Palliser.

Had not the Admiral the whole of his division with him, and part of the Blue division, when he stood upon the larboard tack?—There were five sail to the southward disabled. The Elizabeth was on the starboard tack; another was on my lee-beam. Two of the Red division were disabled. My ship was three miles distant from the Admiral, very much disabled.

Was the Red division in a condition to have re-attacked the enemy?—I could not see their condition, they were so much to windward both of the Admiral and me.

Are we to understand, that the British fleet was so much beaten, that they were not able to renew the engagement as soon as the French?—About four o'clock a great many ships got into their stations, being only, as I conceive, cut, as I was, and therefore were soon put to rights, and after that I know of no other reason why the action was not renewed, but that your division, Sir, did not come down.

Was not the Red division ordered to take the station of the Vice-Admiral of the Blue, in consequence of his having come immediately out of action?—I cannot say when they took that station, but you must have been a great while out of action, Sir, at that time.

You say you saw the Blue flag hoisted on board the Formidable, are you sure it was not hoisted at the mizen-peak, beneath the signal for the line?—I am sure it was not; there was no flag of any kind above it.

At this distance of time can you speak with precision; are you positive it might not be at another time?—I must needs say, Sir, this is a very extraordinary question, after I have particularly said I did not see it at any other time.

CAPT. JERVAIS, of the *Foudroyant*, deposed, that from the time of our seeing the French fleet in the morning of the 24th, when they discovered the face of the British fleet, to the moment they were brought to action, he was fully convinced they never intended bearing

bearing to action, and that the Admiral used his most unremitting endeavours at all times to bring them to battle. He, for his part, would not have hesitated one moment to have done the same, if he had had the command, for any officer who had hesitated, would have been unworthy a command in the British fleet. When the signal was made for chasing in the morning of the 27th, the Vice-Admiral of the Blue was on the lee-bow of the Foudroyant, about three quarters of a mile distant. The evident object of that signal was to combine the division of the Vice-Admiral of the Blue with the centre division. He said, if the Admiral had formed the line of battle instead of bringing with the leeward ships by signal to chase, he was clearly of opinion the Admiral could not have brought on the engagement that day. That the sudden and unexpected closure with the French fleet was the effect of the change of the wind.

What would have been the consequence if I had formed the line at this time?—You would have given time to the enemy to form themselves into some order, when they were much disordered, and have subjected yourself to an attack before your own fleet could have formed, or have permitted the enemy to get out of gun-shot, and escape, if they had been so inclined.

He said, that the Admiral, in not forming the line, was not only justifiable, but praise-worthy. That the charge of his having stood to a great distance beyond the enemy before he wore, was not true. That the signal for the line of battle, made by the Admiral, while on the larboard tack, was the properest of all signals for collecting the fleet, as it required the most prompt obedience. To the best of his recollection, when he approached the Admiral on the larboard tack, he had no more than two or three ships about him of his own division, and the rest were at a considerable distance a-stern, and he had not at any time, while on that tack, a sufficient force with him to renew the fight.

Did you see the Formidable at any time on the larboard tack, after the engagement?—I did not.

He said the Admiral had not the means in any sort of preventing the French forming on the starboard tack. It appeared to him that the Admiral in wearing, and standing to the southward, had two great objects in view. The one, to cover five disabled ships that lay to leeward; and the other, to give time to the Vice-Admiral of the Blue and his division to form in his station a-stern. He knew not a signal that the Admiral could have made which he did not make to collect his fleet. The sail the Admiral carried, was just necessary for the protection of the disabled ships, and could not possibly prevent the Vice-Admiral of the Blue from coming into his station, as it permitted the French to range up with him under their top-sails.

Had this evolution, or my subsequent conduct, the appearance of a flight?—Very much otherwise, since the French fleet might have attacked the British fleet all the afternoon, and at some periods with great advantage. His station in the line of battle a-head was next a-stern to the Victory, which he gained about three o'clock in the afternoon, and traversed till four in the morning.

Did

Did you think I meant to renew the engagement in the afternoon?—I did, and as a proof of it, I called my people up, thinking it advisable to speak a few animating words to them.

What prevented my not renewing the engagement?—The Vice-Admiral of the Blue's not bearing down to his station in the line.

Did he seem to have it in his power to do so?—He did.

Was there nothing that appeared to you to prevent it?—Nothing but his fore-top-sail's being unbent.

President. Might he have come into his station under his main-sail and fore-sail?—I think he might.

How many points might he have bore away from the wind?—At least four points.

Did you see him make any signal to the Admiral of his being disabled?—No.

Did you see him, at any part of the afternoon, repeat the signal for the *de*?—No.

From his log-book it appeared, that on the 28th Ushant bore North 79 degrees, East 21 leagues.

Your situation being nearest to me in the pursuit, &c. I desire you to state to the Court any instances wherein I negligently performed my duty, on the 27th and 28th of July, if you know of any such?—With great respect to you, Sir, and great deference to the Court, I hope I shall be indulged with that question being asked from the Court.

It was accordingly put by the Court, and was thus answered :

I feel myself bound, by the oath I have taken, to answer that question; and I think it consonant to the practice of all naval courts-martial; I have long had the honour of knowing Admiral Keppel; I never served under him before; but I am happy in having the opportunity of publishing to this court, and all the world, that during the whole time the English fleet was in sight of the French fleet, to the 27th of July, he displayed the greatest naval skill and ability, and the most noble enterprise; and his conduct on that day, with the prompt obedience of Sir Robert Harland, will be subjects of my admiration and imitation as long as I live.

He gave an account of the damages of the *Foudroyant* in answer to a question of Admiral Montague's, and concluded his evidence amidst the applause of all the audience.

TWENTY-SIXTH DAY, SATURDAY, Feb. 6.

CAPTAIN JERVAIS, of the *Foudroyant*, was again called to the bar.

Admiral Keppel. Did you see any of the French fleet in the morning of the 28th?—I saw three sail, and the boy at the mast-head said he saw eight sail more.

Did you see any ships signals made for chasing those ships?—I did.

Was your ship in a condition to chase?—No.

Was there any probability of coming up with the French fleet before they reached Brest?—Not the smallest probability.

Cross-Examination by Sir Hugh Palliser.

I think you said there was no more indication of the French coming to action in the morning of the 27th, than on the preceding days; what then was the necessity of taking seven of the Vice-Admiral of the Blue's division from him, to combine them with the centre at that time more than at any other?—I have stated to the Court, that the Vice-Admiral of the Blue and his division were three miles and a half to leeward of the centre, under a very low sail, and the Formidable, as I think, going still further to leeward. It was therefore, as I think, absolutely necessary to combine them with the centre; and I will add, that in my judgment, and I said so at the time, the Vice-Admiral himself accepted the meaning of the signal, for very shortly after the chasing ships had made sail, he crowded sail himself to get up to windward.

I think you said yesterday, that the Formidable was three miles and a half on the beam of the Foudroyant?—I do not mean, Sir, to quibble about an idea; I did not see on what point of the lee-beam she was. It is a very common expression to say the lee-beam, when a ship is several points abaft the beam. I meant however to inform the Court, that you was far distant from your station, agreeable to the order of sailing.

If those ships had been permitted to remain with the Vice-Admiral, would they not have gone into action with him?—I don't see any reason to the contrary. But I beg leave to state to the Court the cause of our coming into action at all; which cause did not exist when those ships were ordered to chase. It was upon a very material shift of wind in our favour, which shift did not happen for four hours after those ships chased.

Be kind enough to state to the Court how much the wind did shift that morning. Your log-book is on the table?—Upon the log-book it shifted, at eight o'clock, one point; and from ten to twelve it shifted two points. A very material advantage, at the same time, was gained by a very successful evolution, in tacking the fleet altogether, which was performed beyond my expectation. But I wish to be understood, that I am not directed by my log-book in the evidence. Though I would not have a log-book altered in my ship, on any consideration on earth, I cannot conceive that I am to be guided by it; since employed in the great duty of our engagement, a man cannot pay that attention to the minutiae of occurrences, as to be accurate in relating them. I give my evidence from recollection, and declare the facts simply, as they struck me at the time, and as they have dwelt with me ever since.

Did you ever know, or did you ever hear, of an Admiral commanding a third part, to have his ships drafted from him, and left to

go into action unsupported?—I must beg leave before I answer that question, to inform the Court, that no such fact existed on the 27th of July. I certainly never did hear of such a case. But I do not admit that it was so.

Did not the manœuvres of the French fleet in wearing, contribute to bring them to leeward, and enable the British fleet to lie up to them?—I saw them in the operation of wearing between eight and ten, which certainly brought them to leeward.

Admiral Arbuthnot. Notwithstanding that, when you came into action, could you fetch the van of their fleet?—No, not in the Foudroyant.

You have spoken of another manœuvre which you observed in the French fleet; pray describe it?—A squall obscured them at that time from our view; but I believe, having seen the success of our evolution, they attempted to do the same, and escape to windward, without coming to action; but several of their ships missing stays, it certainly threw them into that confusion in which we found them.

In a distant view of a fleet, in the operation of changing their position, does it not give them the appearance of disorder, although they may be successively wearing in each other's wake?—It certainly does; but the disorder observable in the French fleet continued till I had passed their rear. They were in no line.

Can you say that the French did not lead large while they were upon the starboard tack?—In the act of wearing, they certainly went large, but it does not strike me that they led large afterwards.

If the Admiral had made the signal, agreeable to the 11th article of his own fighting instructions, for the ships nearest the enemy to form, without regard to the general form delivered, and the rest coming up, had formed in like manner; in that case, would not the fleet have attacked with more advantage than they did?

The Court desired the 11th article to be read.

It was found, on referring to his former evidence, that Captain Jervais had said the Admiral could engage in no other manner than he did.

If the ships of the Blue division had remained together, and engaged in a connected body with their own Admiral, would they not have done more execution, and have suffered less?—I do not know that any part of the question did really exist.

Were not the chasing ships separated and distanced from each other more than they were before?—I did not know they were separated at the time the Vice-Admiral came into action.

At the time before the Admiral wore the second time, to stand to the southward, what was the situation of the Red division?—They were to windward; but I cannot recollect precisely their situation. I so little expected to be called here, on this occasion, that I am not so well provided as I could wish. I might have remembered them better.

While

Whilst the Admiral was standing upon the larboard tack, did he ever make the signal for ships to windward to bear down, or for particular ships to make more sail, or the signal for drawing any ships out of their station?—I did not see these signals made. The signal for the line was made; and if these had been made, very few ships could have obeyed them. I am sure I could not.

Why was it necessary to require an exact line of battle in the afternoon, when it had not been judged necessary in the morning?—The Admiral is charged with not forming a line of battle, nor keeping his ships near enough to the enemy, to be able to renew the engagement. In answer to that part of the charge, I say the Admiral made the signal for the line, and used every means to enable him to renew the attack.

Am I to understand, from your account in general, that the condition of the fleet was such as to render it improper to face the enemy again?—We did face the enemy.

Did you ever hear or know of an English fleet turning their sterns upon an enemy of equal or inferior force?—I deny the fact in all its extent and meaning.

You have said that the enemy might have reached us; in that case were not our sterns to them?—I have answered this question—I have explained the whole of that manœuvre already, and shall not speak of it further, unless ordered by the Court.

President. Did Admiral Keppel, from the 23d to the 28th of July, do any one act disgraceful to the British flag?—I conceive I have given a full answer to that question; but I am ready to say again, I do not know of any one instance, and I do say so.

Do you know, that in all that time Admiral Keppel lost any one opportunity of doing a most essential service to the state, and by losing it, tarnished the honour of the British flag?—I know of no such instance. [Withdrew.]

CAPTAIN KINGSMILL, of the Vigilant, called.

Admiral Keppel. I am charged with having advanced to the enemy, and made the signal for battle without forming the line. What would have been the consequence if I had formed the line, instead of closing with them in the manner I did?—The consequence would have been, that the French would not have been brought to action that day.

I am charged with not having advanced to renew the battle when I had passed the rear, and steered upon the larboard tack. Had I a sufficient force about me to enable me to advance faster than I did?—No.

Was not the signal for the line flying all that time?—Yes.

I am charged with having were again, and steered from the enemy. Was not my wearing again, and standing on the starboard tack, a necessary manœuvre for the protection of my disabled ships, and for collecting my fleet together?—I think it was a very proper manœu-

wre both for the protection of the disabled ships, and for collecting the fleet.

Had it the least appearance of a flight?—No, certainly not.

Do you recollect what sail I carried that afternoon, and during the night?—I cannot say what sail the *Victory* carried, my station was a-head of her, and I preserved it under my top-sails double-reefed, and very often with my mizen top-sail a-back.

Did you see the French fleet on the morning of the 28th?—I saw three sail going large, with all their studding sail set.

Did you see any signals not to chace them?—There were some pennants out, but I do not recollect what ships' they were.

-If I had chaced with the whole fleet towards Ushant, in the situation our fleet then was, was there any probability of coming up with the French fleet before they reached *Brest*?—No, none.

You have heard all the articles of the charge read. I therefore desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?—I can state no such instance, for I know of none. You performed every part of your duty with the utmost ability; and becoming a brave and gallant officer. [Withdrew.]

SIR CHARLES DOUGLAS, late Captain of the *Sterling-Castle*, now of the Duke.

Admiral Keppel. Did the French fleet shew any intention of coming to battle from the 24th of July to the 27th, or did they endeavour to avoid it?—By no means, to the best of my recollection, but ever did their utmost endeavour to avoid it.

Did I use every effort as an officer to bring them to battle?—To the best of my knowledge, with unremitting assiduity.

If you had commanded a British fleet in a similar situation, would you have hesitated a moment to have led it down to battle on account of wind and weather on any of those days?—Had I had the honour of commanding a British fleet in similar circumstances, I would not have desired a better opportunity than daily offered on the French doubling up towards me, after attempting to bring them to action.

What in your opinion would have been the consequence if I had formed the line of battle instead of closing with them as I did?—Judging of their further conduct from their past, I do not think it would have been possible to have brought them to action at all; and even without forming the line, had it not been for the shift of wind, we should not have been able to have reached within cannon-shot of any part of their fleet.

How many ships had the Vice-Admiral of the Red advancing with him on the larboard tack, after the action?—I do not positively recollect. I followed him in the *Stirling-Castle*, towards the rear.

I am charged with hauling down the signal for battle, and preventing the Vice-Admiral of the Red from renewing the engagement on the larboard tack; I desire you to inform the Court what would have

have been the consequence, if, by keeping abroad that signal, I had ordered the Vice-Admiral of the Red to renew the action at that time?—To the best of my judgment, such a measure would have been attended with very disadvantageous circumstances, such part of the Red division not being a sufficient force to have attacked all the French fleet, and moreover not being closed up with one another.

Did my wearing again to the southward appear a necessary manœuvre, or had it the appearance of a flight?—Your wearing to the southward did at that time appear to me a necessary measure, nor had it surely by any means an appearance of a flight, nor did it ever, in the smallest degree, make any impression upon me to that effect.

What sail did you carry in the night?—To the best of my knowledge, my three top-sails, and at times several others which were necessary for the ship, she being foul and much wounded.

Did the very bad sailing of your ship occasion you to fall off astern of the Red division, so as to be in the center?—No.

Did you, in the night of the 27th, and at what part of the night, order your men to quarters, on a ship ranging up with you, which you thought was a ship of the enemy?—About the first dawning of day, having the Berwick, my leader, in my eye, and being then actually rather upon her weather-quarter, that I might have it in my power to re-assume my place with more precision in the line of battle, I saw a ship ranging up with me in my weather quarter; not knowing who it might be, I thought it prudent to order my ship's company to their quarters, and renew our preparations for battle, which had been for some time discontinued.

What ship was it?—As the ships approached towards our beam, I could plainly discern a flag at her main-top-mast-head, the colour of which I could not ascertain with certainty. Passing further along, and no act of hostility having passed between us, I presumed it to be the Formidable, as I was told she had neither top nor peak light, nor at the bowsprit head, nor ensign flying. About this time I bore up a little, as the day opened, that I could do it with safety, into my more precise station, a-head of the Courageux. The ship in question passing along, until she bore further forward, I observed her then to have a blue ensign flying. Seeing the ship approach in the manner described, I do confess I was not without some apprehension that the French had, by edging away upon the larboard-tack, doubled upon our rear, in order to regain the weather-gage; and seeing other ships in the same quarter of the compass, my suspicions grew stronger, insomuch that I did ruminate or entertain the idea of making the signal for seeing strange ships in the north-west quarter, and had actually gone so far as to deliberate whether I should make the night or the day signal, which will serve to ascertain the time.

When the day came, was you then certain it was the Vice-Admiral of the Blue?—It could be no other.

On the 28th, if I had chaced with the fleet in the condition in which it was, was there the least probability of coming up with the French fleet before they reached the port of Brest?—If the French

had observed their former line of conduct, there was not the smallest probability.

You have heard all the articles of the charge, therefore I desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?—I did not observe any thing done or left undone by Admiral Keppel on the 27th or 28th of July, bearing the appearance of negligence. [Withdrew.]

CAPTAIN CROSBY, late of the Centaur, called.

Admiral Keppel. What in your judgment would have been the consequence, if I had formed the line in the morning on the 27th of July, instead of closing with them as I did?—We should have increased our distance, and could not have brought on an engagement.

What would have been the consequence, if, by keeping abroad the signal for the line, I had reduced the Vice-Admiral of the Red with the ships about him, to have re-attacked the enemy?—He had but six or seven ships; and I think it would have been a dangerous experiment; for, from the apparent situation of the fleet in general, he could not have been supported.

Did my wearing to stand to the southward appear to you a necessary manœuvre, or had it the least appearance of a flight?—As to the necessity of the measure, the Admiral was the best judge; and as to a flight without wings, the idea could not strike me.

I beg you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?—If I am allowed to assume an opinion of the conduct of an Admiral so high in command as Admiral Keppel, from the experience that thirty years service has given me, I am of opinion, and do firmly believe, that the Admiral did every thing that could be done for the good of his Majesty's service. I never had the honour of serving under him before; and it is one of the most unfortunate events of my servitude, that I never did serve under him before. [Withdrew.]

CAPTAIN NOTT, late of the Exeter, called.

Admiral Keppel. What, in your judgment, would have been the consequence, if I had formed the line instead of closing with the enemy as I did?—You would not have got into action at all.

How many ships had the Vice-Admiral of the Red when on the larboard tack?—Six or seven at most.

What would have been the consequence of keeping abroad the signal for battle, and ordering the Red division to renew the attack? The destruction of the Red division.

Did my wearing to the southward appear to you a necessary manœuvre, or did it carry the appearance of a flight?—It appeared a very necessary manœuvre; and though I have been thirty years in the service, I never saw an Englishman turn his back upon a Frenchman yet.

You

You have heard all the articles of the charge read ; I therefore desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July ?—I can state no such instance ; I had the honour of serving under you before, and it was the greatest pride of my heart, that I was commissioned to serve under you again, believing you to be the greatest Admiral in the world ; and the whole of your conduct, when in sight of the French fleet, convinced me that my judgment was right. [Withdrew.]

The Honourable CAPTAIN KEITH STUART, of the *Berwick*.

Admiral Keppel. If I had formed the line of battle instead of closing with the French as I did, what would have been the consequence ?—I apprehend they would not have been brought into action that day.

Did my wearing to the starboard tack appear to you a necessary manœuvre ?—It appeared to me a necessary manœuvre ; I never conceived it to be meant as a flight, but, on the contrary, I expected to be again in battle before five o'clock.

Did I make every necessary signal to collect the fleet while on that tack ?—Yes.

If I had chased towards Ushant with the fleet in the situation they were in, was there the least probability of coming up with the French fleet before they reached Brest ?—I think certainly not.

I desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July ?—I know of none.

TWENTY-SEVENTH DAY, MONDAY, Feb. 3.

THE Hon. LIEUTENANT LUMLEY, of the *Robuste*.

Admiral Keppel. Is the log-book you have in your hand an exact copy from the original *Robuste's* log-book ?—Yes, Sir, with two or three additions of my own, which I put in between parentheses.

At what time were the additions made ?—At the time I wrote the log.

Then Mr. Lumley's log-book will ascertain the alterations that have been made in the log-book of the *Robuste*, and I beg they may be compared.

The first difference on comparing them was, that the original log-book had the words "still in chase of the French fleet," which were not in the altered edition of it. In the original it stood, "A signal for the Vice-Admiral of the Blue's Squadron to give chase to windward."—In the altered log it was, "A signal for us and several other ships of the Vice-Admiral of the Blue's Squadron to chase to windward." The words, "at twelve, the weather more moderate," were wanting. An addition had been made to the damages

damages sustained in the engagement, which was not in the original. In the original log it stood, "that at six in the afternoon, the Robuste tacked and resumed her station in the line." But in the second edition, (for the public must understand, that a leaf of this material part of the transactions was cut out and replaced by another) it stood thus: "Between six and seven o'clock observed a signal on board the Victory for ships to bear down, which was repeated by the Formidable, and in the evening we resumed our station in the line, and continued in it as near as we could, the Admiral making much sail." There were many other little alterations, all convincing the Court of the direct intentions with which they had been made.

When did you first come upon deck in the morning of the 28th?
—At three o'clock.

Was it your watch?—No. Mr. Pitt, who had the middle watch, sent down to me, that he would be obliged to me.

Where was the Robuste at day-light?—On the Vice-Admiral of the Red's weather-quarter, within hail of him.

What sail had the Robuste at that time?—The fore and main-top-mast stay-sail, and mizen-stay-sail, with close-reefed top-fails.

Did you shorten sail, or continue upon that sail?—After the First Lieutenant's coming on deck, and finding that it was certainly a red flag at the foremast of the ships to leeward, we hauled our main-sail up, and backed our mizen stay-sail.

Was the Vice-Admiral of the Red a-head of the centre division at that time?—He was.

Cross-Examination by Sir Hugh Palliser.

Was you present when these corrections were made?—I was not, but I was once present when some leaves were taken out of the log-book, which made me believe that an alteration was to take place.

Can you speak of the time, with any degree of precision, when that was done?—It was I think about the 6th of December, when the ship was either at Spithead, or in Portsmouth harbour.

Did you find your main-sail set when you came upon deck at three o'clock?—I did.

Did you learn the occasion of it?—Yes, I was told that after consulting with the Captain he was obliged to carry so much sail to keep a-head of the Vice-Admiral of the Blue, when he pointed out to me a-sterm, without any lights on board; but when day-light broke, he could not discover the Vice-Admiral.

Mr. ARNOLD, Master of the Robuste.

Admiral Keppel. When were the alterations made in the Robuste's log-book?—The last alterations were made on the 12th of December.

At what time of the day?—Between eleven in the morning and two in the afternoon.

By whose orders were they made?—By Capt. Hood's.

Do

Do you know if Sir Hugh Palliser was at Portsmouth at that time?—I do not.

Do you know where the *Robuste* was at day-light on the 28th?—She was on the Queen's starboard quarter, at the distance of two cables length.

Cross-Examination by Sir Hugh Palliser.

Did Captain Hood, when you made the alterations, tell you that he wished for none that were not true?—He told me, on leaving the cabin, that he wished for the book to be correct, and said, *I suppose you can attest this.*

Admiral Arbuthnot. Do you know that the Admiral in Chief did carry much sail in the night of the 27th?—I was not upon deck in the night myself.

Sir Hugh Palliser. When the Captain said he supposed you could attest the alterations, what answer did you make?—I answered, yes; those parts that fell under my observation. [Withdrew.]

The Admiral then addressed himself to the Court, and made a few observations on the alterations:—Mr. Hood, in justification of his conduct in making those alterations, says, that he made them in his own protection, not knowing but he might have been brought to this bar a prisoner, instead of an evidence. I cannot see how Captain Hood can reconcile the alterations he has made to this pretext.

How, Sir, could the signal for chasing in the morning benefit him, if made for several ships of the division, rather than for all the division?

How much less, that the three ships, in the morning of the 28th, were near, rather than far distant? He could not possibly be affected by the escape of three ships, nor could any guilt arise in him, from their being chased or not chased. These are points, however, contained in my accuser's charge, but as they do not affect me, I will not insist upon them. But the one which remains behind, tending directly to affect my life, and what ought to be dearer to every British seaman, my honour; I must beg leave to take notice of it:—“More particularly as it cannot tend, in the smallest degree, to have exculpated him, had he, as he says, been brought to your bar.”

Had the *Robuste* fallen a-stern, indeed, there might have been some advantage in asserting that “the Admiral made much sail.” But instead of being found out of his station a-stern, it has come out in proof, that in the space of a short night he stretched a-head of his station several miles. It is, therefore, too evident, that the alteration was made to support the charge of my accuser. Their intimacy, their connection, tends to corroborate this suspicion. I feel most sensibly for Captain Hood in this case; that the man with whom I lived in familiarity and friendship, and of whose bravery and merit as an officer I am well convinced, should have been seduced by any party or persuasion to have deviated so far from that honourable line of conduct which British seamen ought to pursue, hurts me more than that aimed at me. And I hope it will be believed after this,
that

that I have not investigated this point for the sake of myself, so much as for the security of the service.

Sir Hugh Palliser begged that he might be permitted to offer something in justification of Capt. Hood, when Admiral Montague told him, it was not possible for the Court to take cognizance of the conduct of Captain Hood, and if the Vice-Admiral wished to make any justification of his conduct, he must needs do it in the *Morning Post*, or the *General Advertiser*.

Sir JOHN HAMILTON, Captain of the *Hector*.

Admiral Keppel. What in your judgment would have been the consequence, if I had formed the line instead of closing with the enemy as I did?—You could not have brought them to action at all.

How many ships had the Vice-Admiral of the Red with him when he stood on the larboard tack towards the enemy, after the engagement?—Six or seven.

What in your judgment would have been the consequence, if by keeping the signal for battle abroad, or by any other signal, I had ordered him to advance and renew the attack?—The Vice-Admiral at that time was in a very critical situation, advancing towards five ships of the enemy's rear, and no ship near him but the *Hector*. And it is my firm opinion, if the signal had not been hauled down, they would certainly have been cut off.

Did my wearing at this time, and standing to the southward, appear a necessary manœuvre, or had it the appearance of a flight?—It appeared a necessary manœuvre, and had no appearance of flight.

If I had chased towards Ushant in the morning of the 28th, was there any probability that I could have come up with the French fleet before they reached Brest?—Not the least probability.

You have heard all the articles of the charge read; I therefore desire you to state to the Court any instance, if you know of any, wherein I negligently performed my duty on the 27th or 28th of July?—I know of none.

Cross-Examination by Sir Hugh Palliser.

At what time were there only five ships with the Vice-Admiral of the Red?—When the signal for battle was hauled down.

How many ships of the Red division went with their Admiral, when they formed a-stern of the *Victory*?—About six sail.

Where were the others?—Some of them to leeward, and others resitting after the action.

Do you remember seeing the *Formidable* with her head the same way as the Red division were lying?—I do not recollect it.

The Vice-Admiral asked him two or three questions, respecting the signals that were made while the Admiral was on the starboard tack. To which the Admiral himself answered, "That there was no signal made at that time, but the signal for the line of battle,"—the greatest of all signals.

CAPTAIN

CAPTAIN PRESCOT, of the Queen.

He deposed, that if the Admiral had formed the line of battle, instead of closing with the enemy, in the morning of the 27th, there would have been no possibility of bringing the French to battle.

Admiral Keppel. What in your judgment would have been the consequence, if by keeping abroad the signal for battle, or by any other, I had ordered the Vice-Admiral of the Red immediately to have renewed the battle?—I am sensible that Sir Robert Harland would have punctually obeyed any signal that you had made for him. But the consequence must have been fatal, for the French, with common professional knowledge or bravery, must have destroyed the whole division, before you could have given them support.

Capt. Prescott said, the Admiral's wearing to the southward, appeared to be a very necessary measure, and had not, in any instance, the appearance of a flight. The Admiral used every means in his power to collect the fleet, and renew the battle on the starboard tack; nor did he see one signal or movement on board the Victory, that gave him the smallest reason to believe, that the Admiral did not intend to renew the battle if he could have formed his line. He said the Queen carried her distinguishing lights in the night, and he was truly of opinion, that there was not the smallest probability of coming up with the French fleet, on the 28th, before they had reached Brest, being only, by his reckoning, 26 leagues distant from Ushant on that day. He answered the Admiral's concluding question in the following manner: "I cannot point out to the court any instance of negligence, for I know of none. Having received a great part of my naval skill under your command, I was taught to look up to you with a degree of silent respect; your character is too great to stoop to my judgment; but thus called upon, I declare, and am happy to declare upon my oath, that your conduct on these days added lustre to your name, and held up a great and worthy example to all British seamen."

Cross-Examination by Sir Hugh Palliser:

What fatal consequences were there to be apprehended, if the whole British fleet had advanced and renewed the attack?—The whole British fleet were not in a state to renew the action immediately.

Were not the French advancing towards the British fleet?—Not that I saw.

I mean after they were formed?—At that time I apprehend the Admiral intended to have renewed the engagement; but you and your ships were so much to leeward, that he had not the power to do so.

Mr. WACE, Assistant-Builder in Plymouth Dock-yard, laid upon the table, on oath, accounts of the damages the fleet had received.

The Admiral's letters to Mr. Stephens, of the Admiralty, were now read, which contained every circumstance that occurred during all the time the two fleets were in sight of each other. Two letters from the Secretary were also read; in the first of which the entire approbation of his Majesty on his conduct, and the congratulations of the Admiralty on his victory are contained, conceived in the highest terms of gratitude and thanks; in the second, he receives

thanks for having so prudently provided for the security of our West India fleets, in the appointment of Capt. Leveson Gower, and orders to testify to the Captain their approbation of his conduct.

The Admiral now informed the Court he had concluded his defence, and that he would make no observations on his evidence, but rest it entirely on the wisdom and the integrity of the Court.

Sir Hugh Palliser now addressed himself to the Court, and said it was his intention to make some observations, not only on his own evidence, but also on the defence and the evidence of the Admiral, especially as in defending himself he had criminated him; and as the trial had grown to so voluminous a bulk, it would be some time before he could be prepared, and he hoped the Court would indulge him till Wednesday for that purpose.

The Admiral answered to this, that though he had, for his own part, no objections to the prosecutor's making what observations he pleased on the evidence adduced, yet he could not help observing the requisition was unprecedented in naval Courts-martial, and he conceived it would be establishing a precedent which might, on future occasions, be productive of very dangerous consequences.

On this the Court retired, and on their return the following was their resolution:—"The Court having on a former occasion declared, that when the prosecutor had concluded his evidence, they could not receive a paper presented to them by him; and it being now declared that the evidence on both parts is concluded, it is therefore resolved, that nothing further can be received from either party."

TWENTY-EIGHTH DAY, THURSDAY, *February 11.*

The SENTENCE of the COURT-MARTIAL on the Honourable ADMIRAL KEPPEL.

Pronounced by the JUDGE ADVOCATE.

AT a Court-Martial assembled on board his Majesty's ship *Britannia*, in Portsmouth Harbour, the 7th of January, 1779, and held by adjournment at the House of the Governor of his Majesty's Garrison at Portsmouth every day afterwards (Sundays excepted) till the 11th of February, 1779, inclusive.

P R E S E N T,

PRESIDENT, Sir Thomas Pye, Admiral of the White.

Matthew Buckle, Esq; Vice-Admiral of the Red, till the close of the sixth day, when he became unable any longer to continue his attendance on account of sickness.

John Montague, Esq; Vice-Admiral of the Red.

Marriot Arbuthnot, Esq; } Rear-Admirals of the White.
Robert Reddam, Esq; }

CAPTAINS

C A P T A I N S,

Mark Milbank,
Francis Samuel Drake,
Taylor Penny,
John Moutray,

William Bennett,
Adam Duncan,
Philip Boteler,
James Cranston.

The Court, pursuant to an order of the Lords Commissioners of the Admiralty, dated the 31st of Dec. 1778, and directed to Sir Thomas Pye, proceeded to enquire into a charge exhibited by Vice-Admiral Sir Hugh Palliser against the Hon. Admiral Augustus Keppel, for misconduct and neglect of duty on the 27th and 28th of July, 1778, in sundry instances, as mentioned in a paper which accompanies the said order, and to try him for the same; and the Court having heard the evidence, and the prisoner's defence, and maturely and seriously considered the whole, are of opinion, that the charge is **MALICIOUS** and **ILL-FOUNDED**: It having appeared that the said Admiral, so far from having by misconduct and neglect of duty, on the days therein alluded to, lost an opportunity of rendering essential service to the state, and thereby tarnished the honour of the British Navy, behaved as became a **JUDICIOUS, BRAVE,** and **EXPERIENCED OFFICER**.

The Court do therefore **UNANIMOUSLY** and **HONOURABLY ACQUIT** the said Admiral Augustus Keppel, of the several articles contained in the charge against him, and he is hereby **FULLY** and **HONOURABLY ACQUITTED** accordingly.

GEORGE JACKSON, Judge Advocate.

THOMAS PYE, President.

JOHN MONTAGUE,

MARRIOT ARBUTHNOT,

ROBERT RODDAM,

MARK MILBANK,

FRANCIS SAMUEL DRAKE,

TAYLOR PENNY,

JOHN MOUTRAY,

WILLIAM BENNETT,

ADAM DUNCAN,

PHILIP BOTELER,

JAMES CRANSTON.

(A Copy.)

GEORGE JACKSON.

The President then addressed himself to the Admiral in the following words, delivering to him his sword at the same time:

" Admiral Keppel,

" It is no small pleasure to me to receive the commands of the Court I have the honour to preside at, that, in delivering you your sword, I am to congratulate you on its being restored to you with so much honour, hoping, ere long, you will be called forth by your Sovereign to draw it once more in the defence of your country."

The

The concourse of people that surrounded the Court was becoming the occasion, and was immense. As soon as the sentence was pronounced, an acclamation of joy burst forth in the Court, in repeated peals, which was communicated to the crowd without, and became general through the town; a signal gun was fired to dispatch the tidings to Spithead, and the ships immediately saluted and cheered. The East-Indiamen at Mother Bank fired nineteen volleys. After waiting some little time, the Admiral came forward, and again received the heart-felt gratulations of the multitude. He yielded to the solicitations of the navy at large, and walked home in procession, preceded by a band of music, and attended by the Admirals and Captains of the fleet.

The procession was as follows :

Admiral Sir Robert } The ADMIRAL. { His R. H. the D. of
Harland. } Cumberland.

General Keppel, Sir Edward Hughes, and Admiral Campbell.
Duke of Portland, Marquis of Rockingham, and Earl of Effingham,
About 60 Captains, and a great number of Masters and Lieutenants.

Rear brought up by three Danish Noblemen, volunteers.

The noblemen and gentlemen had light blue ribbons in their hats, which they carried in their hands, with the word "KEPPEL" inserted in gold letters, presented to them for the occasion by the Dukes of Cumberland, the Dukes of Richmond, the Marchioness of Rockingham, the Countess of Effingham, and other ladies of fashion. The band played, "He comes, he comes, the hero comes," while the whole concourse, noblemen, gentlemen in the procession, and ladies from the windows, supplied the vocal part, and the crowd closed each period of the harmony with a choral cheer.

E R R A T A.

- Page 18, l. 31, for *lee-leech main-sail*, r. *lee-leach of the main-sail*.
30, last line, for *any part of the day*, r. *any other time*.
48, l. 10, for *crotcher*, r. *cross-jack*.
71, l. 33, after *board* insert a ;.
84, l. 30, for *that*, r. *than I would*.
86, l. 12, after *Did you take notice of the*, add *Ferocious*.
87, l. 35, for *no*, r. *not*.
115, l. 26, for *Capt. Goodall*, r. *Capt. Sutton*.

DICTIONARY of SEA TERMS.

A.

- A** BACK. Sails are said to be *aback* when flatted by the wind against the mast.
ABEFT, } Behind; towards the stern; between the stern and the
AFT. } main-mast.
ABOARD. Within the ship.
A-BREAST. By the side; along-side,
A-HEAD. Before; before the stem of the ship.
A-STERN. Behind; at the hinder part or stern of the ship.
A-THWART. A-cross; transverse; cross a line.

B.

- To BACK the Sails.** To manage them, so that the ship may sail backwards, or fall a-stern.
BACK-STAYS. Long ropes reaching from the top-mast-head to the starboard or larboard sides of the ship.
BEAM. Strong pieces of timber, reaching from side to side to support the decks.
Before the BEAM. In an angle between the ship's direct course and a right line from the beam.
On the BEAM. In a right line with the beam.
Weather-BEAM. The side of the ship on which the wind blows, as *Lee-Beam* is the contrary.
To BEAR. To direct the ship's course to.
To BEAR DOWN. To sail towards.
To BEND THE SAILS. To fasten them to the yards or stays.
BOOMS. Poles for the purpose of extending particular sails, as the studding-sails, &c.
BOW. The rounding part of the ship's side, towards the stem or forepart.
Lee-BOW. The bow under the wind.
Weather-BOW. The bow against which the wind blows.
Starboard-BOW. The right-hand bow.
Larboard-BOW. The left-hand bow.
On the BOW. In a right line with the bow.
BOWSPRIT. A mast projecting over the stem, to carry sail forward.
BOW-LINE, } A rope fastened to the leech or hanging edge of the
BOWLING. } square-sails by intervals, called bridles.
BRACES. Ropes used for the purpose of shifting the sails, &c. generally fastened to the extremities of the yards.
BRIG. A small vessel, in which the main-sails run in a line with the keels, &c.
To BRING-TO. To check the course of the ship, so as to detain it in one situation.
BROADSIDE. The whole discharge of the guns on one side of the ship, above and below.

RUNT-LINES. Ropes fastened to the bottom of the square-fails, to draw them up to the yards.

C.

CABIN. An apartment for the officers.

CABLE. A large rope for the purpose of staying a ship at anchor, &c.

CABLE'S-LENGTH. The length of the cable, 120 fathoms.

CANVAS. Sail.

CAP. A strong block of wood, made use of to confine masts two together.

To CARRY MORE SAIL. To hoist more sail for the purpose of expediting a ship's course.

To CARRY MUCH SAIL. To put out a great deal of sail to hasten the ship's course.

CATHARPINGS. Ropes used to brace the shrouds tight.

CENTER. The middle.

To CHACE. To pursue; to sail after with a design of overraking.

CHAINS. Strong links or plates of iron bolted through the ship's sides to the timbers.

CHANNELS. Projecting boards on the outside of the ship, to which the shrouds of each mast are extended; thus there are fore, main, and mizen Channels.

CLOSE-HAULED. The general trim or arrangement of the fails, when the ship is to make the nearest progress to windward.

CLOSE UPON A WIND. Near the wind; near the point whence the wind blows.

COURSE. The track of sailing.

COMPASS. An instrument employed to determine the ship's courses, &c.

COURSES. The principal fails.

CRIPPLED. Disabled.

CROSS-JACK, or CRODDICK. A sail extended on the lower yard of the mizen-mast.

To CROUD SAIL. To carry extraordinary sail.

CUTTER. An open boat.

D.

DECK. The floor or platform of a ship.

DISMASTED. Deprived of the masts.

DIVISION. A part of a fleet under a separate command.

To DOUBLE. To sail rather beyond, and turn about.

E

To EDGE AWAY, } To decline or sail gradually from.
To EDGE OFF. }

To EDGE DOWN. To sail down gradually.

F.

FALL. The loose end of a tackle.

To FALL A-STERN. To sail back; to be driven behind.

To FALL DOWN. To sail down as it were in a retrograde course.

FATHOM. Six feet.

To FETCH A SHIP. To come up with.

To FISH A MAST. To strengthen it by fixing about it a concave piece of

of timber on the outside, either when damaged, or to prevent any accident that may happen.

FORE-CASTLE. A short deck in the fore-part of the ship, above the upper deck.

FIRE-SHIP. An old ship filled with combustibles, and fitted with grappling irons, to hook to, and set fire to an enemy.

FLAG. A banner, or standard, on board the Admiral's ship for distinction.

FLAG-OFFICER. The same as an Admiral.

FORE. All that part of the ship which lies towards the stem.

To reach upon a Ship's FORE. To gain ground upon; to advance before.

FORE-SAILS. The sails belonging to the fore-mast.

FORE-TOP-SAILS. The sails belonging to the fore-top-mast.

FORE-TOP-GALLANT-SAILS. The sails belonging to the fore-top-gallant-mast.

FORE-MAST. The mast which is next to the stem, or fore-part of the ship.

FORE-TOP. The platform on the top of the fore-mast.

FORE-TOP-MAST. The second division of the fore-mast.

FORE-TOP-GALLANT-MAST. The third, or upper division of the fore-mast.

FORE-TOP-MAST-HEAD. The head, or upper-end of the fore-top-mast.

To FORM A FLEET. To range a fleet properly.

FRIGATE. A light vessel for the purpose of sailing swiftly.

To FURL THE SAILS. To roll them close up to the yard, stay, or mast, and fasten them with a line called the Furling-line.

FUTTUCK SHROUDS. Shrouds that fall back, which go from the common shrouds to the tops.

G.

GAMMONING. A rope that binds the inner quarter of the bowsprit to the stem.

GIB, or JIB. The foremast stay-sail of a ship, extended from the outer end of the bowsprit to the fore-top-mast-head.

GUNNER. An officer appointed to take charge of the artillery and ammunition.

H.

To HAIL. To call to; to speak to.

HALLIARDS. Ropes and tackle employed to hoist or lower any sail upon its mast or stay.

HARD A LEE. When the helm is pulled to the leeward, either to tack or turn the head to windward.

HARD A WEATHER. When the helm is pushed to windward.

To HAUL. To pull a rope without tackle, blocks, &c.

To HAUL THE WIND. To direct the course to windward.

To HAUL DOWN. To draw down.

HAWSER. The large rope between the cable and tow-line.

HEAD. The front or fore-part of the ship.

HEADMOST. Most a-head; foremost; most advanced.

HEAD-SAILS. The sails of the bowsprit and foremast.

To HEAVE. To lift or turn by a lever.

To HEAVE THE LOG. To lift it for the purpose of observing the ship's course.

HELM. That part of the ship by which her course is directed.

To HOIST. To pull up.

HOLD. The hollow cavity between the floor and lower deck.

HOVE. Heaved, turned, or lifted.

HULL. The body of the ship, independant of the masts, sails, and rigging.

J.

JACK. A flag or ensign displayed on a mast, erected on the outer end of the bowsprit.

JIB. See **GIB.**

JURY-MAST. An occasional or spare mast, to supply the place of one that is wanting.

K.

KEEL. The bottom timber of the ship.

KNOTS. Divisions in the log-line to mark the rate of sailing; thus two knots an hour are the same as two miles an hour.

L.

LARBOARD. The left.

LARGE. A term applied to the wind when it crosses the line of a ship's course in a favourable direction, particularly on the beam or quarter.

To SAIL LARGE. To advance with a large wind when the sails are slack.

LATITUDE. Distance from North or South.

To LAY-TO, } To form or manage the sails, so as neither to advance or
To LIE-TO. } recede, the sails counteracting each other.

To LAY THE HEAD TO. To stand towards.

LEEWARD. Towards where the wind blows; opposite to windward; thus if the wind be in the North, the South is to leeward.

LINE. Order or arrangement [of a fleet lying head to stern, with their sides parallel.

LEECH. The border or edge of a sail.

LOG. A small piece of timber, with lead so contrived as to swim upright in the water, the other end being fastened to the log-line, a little cord furnished with knots or divisions, to mark the ship's time of sailing.

LOG-BOARD. A board on which the ship's daily occurrences are marked down, and from thence entered into the log-book.

LOG-BOOK. A book into which the occurrences on board a ship are written, taking them from the log-board.

M.

MAST. A long round piece or pieces of timber united, extending perpendicularly from the keel upwards, to which are joined the sails, rigging, &c. and in large ships are in three separate joints or divisions, as the mast, top-mast, and top-gallant-mast.

MAIN-MAST. The lower and middle mast of a ship.

MAIN-TOP-MAST. The second division of the middle mast.

MAIN-TOP-GALLANT-MAST. The third or upper division of the main or middle mast.

MIZEN-MAST. The mast next to the stern, which has also its top, and top-gallant-mast.

MAIN-SAIL. See **SAIL.**

MAINS. The principal sails, yards, &c.

To MAKE SAIL. To increase the quantity of sail.

MIZEN-SAILS. Sails belonging to the mizen-mast.

MASTER

MASTER. An officer appointed to take charge of the navigating and conducting a ship, under the direction of the Captain.

MATE. Assistant to the master, surgeon, &c.

MAIN-TOP-SAIL. The sail of the main-top-mast.

MAIN-TOP-HEAD. The upper part or head of the main-top-mast.

MIDSHIPMAN. A cadet on board a ship, appointed by the Captain to second the orders of the officers.

O.

ORLOP. A platform of boards over the beams where the officers stow-rooms are placed.

To OUT-SAIL. To sail faster.

P.

PEAK or PEEK. A slope on the mizen sail, where signals are hung.

PENNANT. A narrow streamer, or ensign, displayed from the mast-head, for the purpose of distinction, notice, &c.—This word is often, though improperly written *Pendent* or *Pendant*, which is the name of a rope fixed under the shrouds upon the head of the main-mast and fore-mast.

To PLY. The act of making a progress against the wind.

POOP. The hindmost deck of the ship.

PURSER. An officer appointed to take charge of the ship's provisions.

Q.

QUADRANT. An instrument used to observe heights and distances.

QUARTER. That part of a ship's side which lies towards the stern, as the bow is the side to the stem.

Weather QUARTER. That quarter against which the wind blows.

Lee QUARTER. The quarter which lies to the leeward.

On the QUARTER. In a line with the quarter.

QUARTER-MASTER. An inferior officer appointed to assist the mates.

R.

To RAKE. To fire into the head or stern.

RATE. Order; degree; as to size, burthen, &c. thus: a first rate, second rate, &c.

RATE. Reckoning; computation; degree; proportion.

RATTLINGS. The steps of the shrouds, placed horizontally to form a ladder.

REAR. Hinder part.

REEF. A portion of the sail between the eyelet holes, which is gathered up occasionally, and then the sail is said to be reefed.

To REEF a sail. To roll up the sail the distance of a reef, hence *double-reefed* when two reefs are pulled in, to reduce the quantity of sail, and consequently to impede the course of the ship.

REEF-TACKLE. A rope used to pull the skirts of the reefs close up to the extremities of the top-sail-yards, to lighten the sails.

REEFED, applied to a mast. When a mast is cracked or broken, the end so injured is sawed off, and the remaining part set up again now much shorter. This mast is called a *reefed-mast*.

To RIG. To furnish with ropes, &c.

RIGGING. A general name for all the ropes employed about the masts, sails, &c.

Running

Running RIGGING. All that part of the rigging which passes through pulleys.

Standing RIGGING. All the ropes which support the masts.

RUDDER. That part of the helm by which the ship is guided.

S.

SAIL. Canvas, linen, or hempen cloth, sewed together at the selvages, and edged round with a cord, fastened to the yards and stays of a vessel, for the purpose of navigating the ship; the principal are, the courses or lower sails, the top-sails and top-gallant-sails.

Each mast has three kind of sails, as the main-sail, main-top-sail, main-top-gallant sail; so the fore-sail, fore-top-sail, fore-top-gallant-sail, &c.

To make SAIL. To spread additional sail; to expedite the ship's course.

To shorten SAIL. To reduce the quantity, that the ship may move slower.

To set SAIL. To begin to sail; to unfurl the sails for the purpose of driving the ships on the water.

To stretch SAIL. To extend the sails to the utmost.

SCHOONER. A small vessel with two masts.

To SET. To observe by compass. Applied to a ship.

To SET A SAIL. To expand; to loosen.

SHEET. A rope fastened to one or both the lower corners of a sail.

SHIFT applied to the wind, alteration; change, &c.

SHROUDS. Large ropes extended from the mast-head to the right and left sides of the ship, to support the masts, and enable them to carry sail, &c.

Futtock SHROUDS. See **FUTTOCK SHROUDS.**

SIGNALS. Particular notices by hoisting colours or lights, firing guns, rockets, &c. so as to be understood by the fleet, and are accordingly agreed upon before the fleet proceeds to sea.

SLINGS. A rope made for the purpose of encircling any thing, so as to lift it in that manner.

STATION. Place.

To SPLICE. To join two ends of a rope together.

SPRIT-SAIL. A sail extended by yards under the bowsprit.

SPRIT-SAIL-TOP-SAIL. A sail extended above the sprit-sails above the gib-boom.

STANDING. The movement of a ship either advancing to or departing from.

To STAND TO. To oppose; to bring the ships so as to face.

STARBOARD. Right hand side.

STAY. A large rope fastened from the top of one mast to the foot of another before it, to prevent the mast from falling backward.

To STAY A SHIP, or *to bring her on the STAYS,* is to manage the tackle and sails so that she cannot make any way forwards; which is done in tacking.

To Miss STAYS. To be incapable of managing a ship so as to be brought to stays.

STAY-SAIL. A triangular sail moving upon the stay between the masts, like a curtain on a rod, only set in favourable weather. There are, the mizen stay-sail, mizen-top stay-sail, and sometimes mizen-top-gallant stay-sail, between the mizen and main-masts; between the fore and main-masts, there are, main-stay-sail, main-top-stay-sails, &c.; between the fore-mast and bowsprit are, the fore-stay-sail, the fore-top stay-sail, and the gib.

STEERAGE-WAY. The progressive motion of the ship.

STEM.

STEM. The fore part of a ship.

STERN. The hinder part of the ship.

STERNMOST. Most behind.

STERN-POST. A long strait piece of timber erected at the keel to support the rudder.

STUDDING SAILS. Light sails beyond the skirts of the principal sails, appearing like wings upon the yard-arms.

T.

TACK. A rope on each side used to confine the foremast lower corners of the courses and stay sails in a fixed position, when the wind crosses the ship's course obliquely, by the use of which the course of the ship may be changed.

To TACK. To change the course from one board to another, from left to right, or from right to left.

TACKLE. A machine for the purpose of raising any weight, to support the mast, to extend the sails, rigging, &c.

TOP-MAST. The second division of a mast.

TOP-GALLANT-MAST. The third or upper division of a mast.

TOP-SAILS and TOP-GALLANT-SAILS. The sails of the top-mast and top-gallant-mast.

V.

VAN. The front ; the division which leads the attack.

To VEER. To change the course.

To UNBEND THE SAILS. To take them off from the yards and stays.

UPPER-WORKS. All that part of a ship above the water.

W.

WAKE. The track which the ship makes in sailing.

WAY. The ship's course, or progress.

To WEAR. To turn round for the purpose of sailing.

WEATHER-BOW.

WEATHER-QUARTER. } See Bow and QUARTER.

WEATHER-GAGE. Situation to windward ; advantage of the wind.

WHALE, or WALE. An assemblage of planks at different heights to strengthen the decks, forming the curves on the sides of the ship.

To WEATHER A FLEET. To sail to windward of.

Y.

YARD. A long piece of timber to extend the sails.

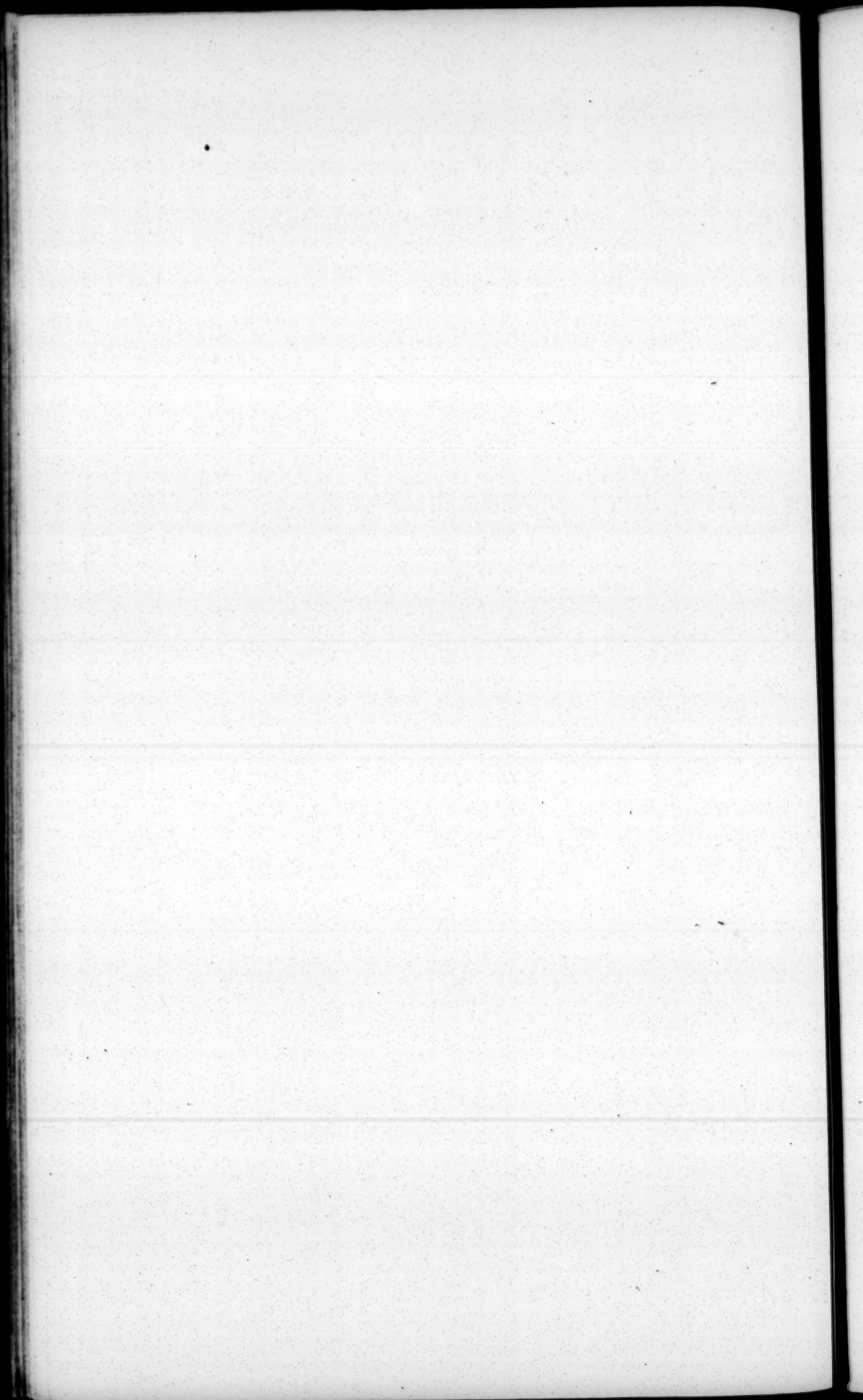
YARD-ARM. The projecting ends of the yards.

To brace the YARDS. To traverse them about the masts, so as to form greater or lesser angles with the ship's length.

To square the YARDS. To make them hang on right angles with the keel or masts ; or to make them of greater length.

YARD-TACKLE. The tackle employed for the purpose of directing the yards.

THE END.



A P P E N D I X.

The CORRESPONDENCE between the Honourable AUGUSTUS KEPPEL, Admiral of the Blue, and PHILIP STEPHENS, Esq; Secretary to the Admiralty.

S I R,

Admiralty-Office, Dec. 9, 1778.

SIR HUGH PALLISER, Vice-Admiral of the Blue Squadron of his Majesty's fleet, having in his letter of this day's date transmitted to my Lords Commissioners of the Admiralty, a charge of misconduct and neglect of duty against you, on the 27th and 28th of July, 1778, in divers instances therein mentioned, and desired that a Court-Martial may be held for trying you for the same; and their Lordships intending that a Court-Martial should be held for that purpose, I have it in command from them to send you herewith a copy of the said charge, that you may be preparing for your defence.

I have the honour to be, Sir,

Your most obedient humble servant,

Hon. Augustus Keppel,

PH. STEPHENS.

Admiral of the Blue, &c.

S I R,

Audley-Square, Dec. 10, 1778.

I have received your letter of yesterday's date, informing me, "That Sir Hugh Palliser, &c. [*the above letter repeated.*] I must beg of you to inform their Lordships, that to so very extraordinary a proceeding I can for the present only say, that I must take some time for consideration before I can return any other answer, than that I have received your letter.—I am, Sir,

Ph. Stephens, Esq.

Your humble servant,

A. K.

S I R,

Audley-Square, Thursday night, Dec. 10, 1778.

THE very extraordinary contents of your letter of last night made it impossible for me on a sudden to make any other answer, than a bare acknowledgment of having received it; but it has not required much time to determine me, in justice to my own reputation, to inform you, that I am willing to meet a Court-Martial whenever the Board of Admiralty shall think proper to order me.

At the same time, Sir, I desire you will represent to the Lords Commissioners my utter astonishment at the countenance their Lordships have so far given to this proceeding, as to resolve, on the same day on which such a charge is exhibited, to order a Court-Martial against the Commander in Chief of the fleet, on an attack from an inferior officer, under all the very peculiar circumstances in which Sir Hugh Palliser now stands.—I am, Sir,

Ph. Stephens, Esq.

Your humble servant,

A. K.

S I R,

Audley-Square, Dec. 11, 1778.

YOUR letter of the 9th, giving me notice to prepare for my defence at a Court-Martial, makes it necessary for me to desire of their Lordships, that Captain Jervis, of his Majesty's ship *Foudroyant*, Captain Marshall, of his Majesty's ship *Arethusa*, and Sir William Burnaby, Captain of his Majesty's ship *Milford*, may not be ordered to sea before the Court-Martial is held.

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I may

I may have occasion to call many officers and persons belonging to other ships not ordered to sea; the evidence of the Captain and First Lieutenant of his Majesty's ship the Fox I should be glad to have; but as the time of the return of those gentlemen to England is uncertain, I will not, on that account, protract the assembling of the Court-Martial.

I am, Sir, your humble servant,

Ph. Stephens, Esq.

A. K.

S I R,

Admiralty-Office, Dec. 11, 1778.

I received yesterday afternoon your letter of the 10th instant, acknowledging the receipt of mine of the 9th, transmitting a copy of the charge exhibited against you by Vice-Admiral Sir Hugh Palliser, and this morning I received your letter dated last night, intimating that you are willing to meet a Court-Martial whenever the Board of Admiralty shall think proper to order one; and having without loss of time laid the same before my Lords Commissioners of the Admiralty, I am commanded by their Lordships to acquaint you, that they propose to order a Court-Martial to be assembled on Thursday, the 7th of January next, if you think you shall be ready with your evidence by that time; but if not, their Lordships will order it to be held on a later day.

As to the astonishment you express at the countenance you conceive their Lordships have given to this proceeding, by resolving, on the same day on which the charge was exhibited, to order a Court-Martial, their Lordships command me to acquaint you, that they know of no instance in which the Board of Admiralty, upon receiving a specific charge of such a nature, signed by an officer of rank, serving under the party accused, and accompanied with the request of assembling a Court-Martial thereupon, have delayed coming to a resolution to order one; nor would they have thought themselves justified, if they had hesitated to take the necessary steps for bringing the matter to an early and legal decision.

I have the honour to be, Sir,

Your most obedient humble servant,

Hon. Admiral Keppel, Town.

PH. STEPHENS.

S I R,

Admiralty-Office, 12th Dec. 1778.

HAVING laid before my Lords Commissioners of the Admiralty your letter of yesterday's date, desiring that Captain Jervis of the Foudroyant, Captain Marshall of the Arethusa, and Sir William Burnaby, Captain of the Milford, may not be ordered to sea till a Court-Martial has been held for your intended trial; and representing that you may have occasion to call many officers and persons belonging to other ships not ordered to sea, and that you should be glad to have the evidence of the Captain and First Lieutenant of his Majesty's late ship the Fox; but as the return of these gentlemen to England is very uncertain, you will not on that account protract the assembling of the Court-Martial; I am in return commanded by their Lordships to acquaint you, that in order to comply with your request respecting the Captains Jervis, Marshall, and Sir William Burnaby, they will appoint other officers to command their ships till the trial is over; that if you will transmit to their Lordships a list of such other officers and persons as you may have occasion to call upon, they will in like manner appoint others to supply their places, that you may not be deprived of their evidence, nor the

the public of the use of the ships to which they belong; and with respect to the Captain and First Lieutenant of the Fox, I am to acquaint you, that their Lordships will take every method in their power to have them exchanged, or to obtain permission for them to come to England upon their parole as soon as possible.

I have the honour to be, Sir,

Your most obedient humble servant,

Hon. Admiral Keppel, Town.

PH. STEPHENS.

S I R,

Audley-Square, Dec. 12, 1778.

IN answer to so much of your letter of yesterday, informing me that the Lords Commissioners of the Admiralty propose to order a Court-Martial to be assembled on Thursday the 7th of January next, if I am ready with my evidence by that time, you will please to inform their Lordships, I shall be perfectly ready to meet the Court-Martial at the time fixed, provided the evidences mentioned in the list that accompany this can be assembled; others that occur to me I shall transmit you the names of from time to time; but I must beg leave to observe, and wish you would please to communicate to their Lordships, that the evidence of the Captain and First Lieutenant of his Majesty's late ship the Fox will be so material to me, I hope and desire that effectual means may be taken to get those gentlemen to England in time.—I am, Sir,

Ph. Stephens, Esq.

Your humble servant,

A. K.

S I R,

Admiralty-Office, Dec. 14, 1778.

HAVING laid before my Lords Commissioners of the Admiralty your letter of the 12th instant, inclosing a list of evidence whom you desire to attend the Court-Martial which is proposed to be held for your trial on the 7th of January next, as also your two letters of this day's date, desiring that all the Lieutenants and Warrant Officers (except the boatswain, gunner, and carpenter) who were on board his Majesty's ship Foudroyant, the 27th of July last, may be kept at home as necessary evidences at the said Court-Martial; I am commanded by their Lordships to acquaint you, that the necessary directions will be given, that the evidences above-mentioned may be forth-coming.—I have the honour to be, Sir,

Your most obedient, humble servant,

Hon. Augustus Keppel, Admiral
of the Blue, &c. Town.

PH. STEPHENS.

S I R,

Audley-Square, 16th Dec. 1778.

MY counsel having informed me, that before they can give me the best advice in their power upon the charge of Sir Hugh Palliser, it will be necessary for them to see the whole of my instructions and correspondence with you; and that it may be necessary to produce the whole or part of them before the Court-Martial, I desire you will acquaint the Lords Commissioners of the Admiralty therewith.

I am, Sir, your humble servant,

Ph. Stephens, Esq.

A. KEPPEL.

S I R,

London, Dec. 17, 1778.

I inclose you a letter I received this day from Capt. Rowley, and in compliance with his request, I have only to beg you to acquaint their Lordships that I am not in the least desirous to give interruptions to the objects of the state, but to hope that the Court-

E c 2

Martial

Martial may be brought forward without interruption to the public service on my part. Captain Rowley has therefore my consent to proceed upon the service he was appointed to.

I am, Sir, your most humble servant,
Ph. Stephens, Esq. A. R.

DEAR SIR, *Wimering, near Portsmouth, 16th Dec. 1778.*

BY a letter I received from Lord Mulgrave, dated the 19th, he informs me you have desired I may be detained, as you want me as an evidence. The Monarch was at a very great distance from the centre or the rear, she being one of the first ships that begun the action; and being employed with giving orders concerning the ship I commanded, I cannot therefore know much of signals, &c. If you can dispense with my evidence, it will be doing me a singular mark of your friendship, having got the command of the Squadron, and every thing fixed to go to the West-Indies; but if you think I can after this be of any service, I beg you will make use of me, who is, dear Sir, Your much obliged, and obedient servant,

JOSEPH ROWLEY.

S I R, *Admiralty-Office, 18th Dec. 1778.*

I received and lost no time in laying before my Lords Commissioners of the Admiralty your letter of the 16th instant, respecting the communication of your instructions, and correspondence with me to your counsel, and perhaps to the Court-Martial that is to be assembled for your trial. I was in hopes I should have been enabled by this time to have sent you their Lordships answer thereto; but as the instructions to which you allude are of a very secret nature, and were given in pursuance of his Majesty's commands, signified by one of his principal Secretaries of State, it is necessary that their Lordships should receive his Majesty's farther commands, before they can with propriety give you a full answer to your letter. Their Lordships are persuaded, in the mean time, you will not communicate those instructions to any person whatsoever, and they command me to assure you, that you shall have their further answer with as little delay as possible.

I am, Sir,
Your most obedient humble servant,
Hon. Admiral Keppel, London. PH. STEPHENS.

S I R, *Admiralty-Office, 21st Dec. 1778.*

MY Lords Commissioners of the Admiralty having acquainted Lord Viscount Weymouth, his Majesty's principal secretary of state, with your having been informed by your counsel, that before they could give you the best advice in their power upon the charge of Sir Hugh Palliser, it would be necessary for them to see the whole of your instructions and correspondence with this office; and that it might be necessary to produce the whole or part of them at the Court Martial; and my Lords having at the same time desired his Lordship to signify his Majesty's commands with respect thereto, his Lordship has in return informed them, that it is his Majesty's pleasure they should signify to you, that you must be sensible that there are parts of your instructions which cannot be divulged without great detriment to the state. I am commanded by their Lordships to signify the same to you accordingly, and to inform you in further answer to your letter of the 16th instant, that they cannot consent that the whole of your said instructions, and the correspondence above the

mentioned, should be laid before your counsel, or be produced at the Court-Martial; but if you will point out any parts of the said instructions or correspondence which in your opinion have any relation to the operations of the fleet on the 27th and 28th of July last, you will be permitted to make use of them in the manner you desire, if there shall appear to be no objections of the nature above-mentioned.—I have the honour to be, with great regard, Sir,

Your most obedient, humble servant,

Hon. Augustus Keppel.

PH. STEPHENS.

S I R,

Audley-Square, Dec. 23, 1778.

I HAVE received your letter of the 21st instant, in which you inform me that the Lords Commissioners of the Admiralty had acquainted Lord Weymouth, one of his Majesty's principal Secretaries of State, with the contents of my letter to you of the 16th. That his Lordship has in return informed them, "That it is his Majesty's pleasure
" they should signify to me that I must be sensible there are parts of
" my instructions which cannot be divulged without great detriment
" to the State, and that the Lords Commissioners of the Admiralty
" had ordered you to inform me, that they cannot consent that the
" whole of my instructions and correspondence with you should be laid
" before my counsel, or be produced at the court-martial; but that
" if I will point out any parts of the said instructions or correspon-
" dence, which in my opinion has any relation to the operation of
" the fleet on the 27th or 28th of July last, I shall be permitted to
" make use of them in the manner I desire, if there be no objections
" of the nature above-mentioned."—

I am also to acknowledge the receipt of your letter of the 18th, in which you inform me, "That it was necessary their Lordships should
" receive his Majesty's farther commands, before they could with
" propriety give me a full answer to my letter; and that their Lord-
" ships were persuaded that in the mean time I would not commu-
" nicate those instructions to any person whatsoever." In answer to which, I must desire you will acquaint their Lordships, that I neither have made, nor will make any unnecessary communications of my instructions, nor are even my counsel yet apprized of any part of them. But in answer to your letter of the 21st, I must beg of you to inform their Lordships, that they have totally misunderstood my letter of the 16th, if they imagined that, when put upon my trial for the defence of my life and honour, I could think of asking any permission to produce before the court which is to try me, any circumstance which in my own opinion, or that of my counsel, may in any degree be useful for my defence. No, Sir, my letter of the 16th was not to ask leave to do what by every rule of justice is my right. In respect to the last paragraph of your letter of the 24th, "That if I will point
" out any parts of such instructions or correspondence which in my
" opinion has any relation to the operations of the fleet on the 27th
" and 28th of July last, I shall be permitted to make use of them in
" the manner I desire, if there shall appear no objections of the na-
" ture above-mentioned," I can only say, that I conceive that my instructions, and every part of them, must necessarily have relation to the operation of the fleet on the 27th and 28th of July last, and on every day it was acting under my command, and that I was acting under those instructions. As to my pointing out the particular parts which I conceive may be most useful to me, and opening my defence

to that Board of whose conduct towards me in this business I have reason to complain, where the accusations against me originated, and where my accuser has a seat, it cannot on reflection be expected, nor can I believe their Lordships intend, that when they put me on my trial, they are to limit me by their discretion in the use of such means as I may think expedient for my defence, and that they propose to distress me by such an alternative as that I must necessarily (according to their statement) either bring detriment on the State, or prejudice to my own justification.

I am, Sir, your very humble Servant,

Ph. Stephens, Esq.

A. K.

S I R,

Audley-Square, 24th Dec. 1778.

THE evidence of Captain Windsor, and of the First Lieutenant of his Majesty's late ship the Fox, I consider so material at the court-martial to be held for my trial on the 7th of next month, that I cannot help troubling you again on that head, and to beg to be informed whether such steps have been taken, as to insure their arrival in England in time.

At present it does not occur to me that I shall have occasion to call for the evidence of any of the officers of the Monarch, therefore do not wish any of them to be detained from the service they are going upon.

I am, Sir, your humble servant,

Ph. Stephens, Esq.

A. K.

S I R,

Admiralty-Office, 24th Dec. 1778.

HAVING received and read to my Lords Commissioners of the Admiralty your letter of this day, desiring to be acquainted with the steps which their Lordships have taken to insure the arrival of Capt. Windsor, and the First Lieutenant of the Fox, in time to give evidence on your trial on the 7th of next month; in return I am commanded by their Lordships to acquaint you, in addition to what is mentioned in the letter I had the honour to write you on the 12th instant, concerning these witnesses, that their Lordships, on the same day, desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for the procuring their appearance at the time afore-mentioned; and I am now further to inform you, it is not their Lordships' intention that the court shall sit until the effects of the afore-mentioned application is known. Their Lordships observe what is mentioned in your afore-mentioned letter about excusing the attendance of the officers of the Monarch.

I am, Sir, your most obedient humble servant,

Hon Admiral Keppel.

PH. STEPHENS.

S I R,

Audley-Square, Dec. 26, 1778.

I RECEIVED yesterday your letter of the 24th, in answer to mine to you of the same day, informing me, that in addition to what is mentioned in your letter of the 12th instant, concerning the attendance of Capt. Windsor, and the First Lieutenant of his Majesty's late ship Fox, at the court-martial to be held for my trial on the 7th of next month, that their Lordships, on the same day, desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for procuring their appearance at the time afore-mentioned; and further to inform me it is not their Lordship's intention that the court shall sit until the effects of the afore-mentioned application is known.

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This information leads me to apprehend a possibility of the enquiry being put off, and any delay, I much fear, will be productive of serious detriment to my country, in detaining so many other officers from the public service.—From this consideration I remain of opinion, that the evidence of Captain Windfor and of his Lieutenant, may be material at the trial, I must repeat what I wrote to you in my letter of the 11th instant, that from the uncertainty of the return of those gentlemen to England, it is my wish not to have the court-martial put off on that account.

I am, Sir, your humble servant,
Ph. Stephens, Esq. A. K.

S I R, *Admiralty-Office, 27th Dec. 1778.*

HAVING laid before my Lords Commissioners of the Admiralty your letter of the 23d instant, their Lordships, in answer to that part of it which relates to the accusation against you, command me to inform you, that the accusation did not originate from their Board, but from Sir Hugh Palliser, whose attendance there has been dispensed with ever since.

Their Lordships having already communicated to you his Majesty's pleasure with regard to your secret instructions, cannot think it necessary to say any thing further to you upon that subject.

I have the honour to be, Sir,
your most obedient humble servant,
Hon. Augustus Keppel, PH. STEPHENS.
Admiral of the Blue, &c.

S I R, *Admiralty-Office, 27th Dec. 1778.*

VICE-ADMIRAL Sir Hugh Palliser having, in his letter of yesterday's date, acquainted my Lords Commissioners of the Admiralty, that as the witnesses will be assembled at your trial, he shall be ready as soon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, 1778; and he having therefore desired that their Lordships will be pleased to require you to give in your charge as soon as may be, if you have any to make against him, I am commanded by their Lordships to send you herewith a copy of the said letter, and to signify their direction, that if you have any thing to charge against the conduct of Vice-Admiral Sir Hugh Palliser, you do transmit the same to their Lordships as soon as may be.

I have the honour to be, Sir,
your most obedient, humble servant,
Hon. Admiral Keppel. PH. STEPHENS.

S I R, *Admiralty, 26th Dec. 1778.*

AS the witnesses will be assembled at the trial of the Honourable Admiral Keppel, I beg leave to acquaint the Lords Commissioners of the Admiralty, that I shall be ready, so soon as that trial is over, to vindicate my own conduct and behaviour on the 27th of July 1778: I therefore desire their Lordships will be pleased to require Admiral Keppel to give in his charge as soon as may be, if he has any to make against me.

I am, Sir, your most obedient humble servant,
Ph. Stephens, Esq. HUGH PALLISER.

S I R,

S I R, *Audley-Square, Sunday Afternoon. 27th Dec. 1773.*

I HAVE to acknowledge the receipt of your letter of this day's date, inclosing a letter from Sir Hugh Palliser, acquainting the Lords Commissioners of the Admiralty, that as the witnesses will be assembled at my trial, he will be ready, as soon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, and desiring that their Lordships will be pleased to require me to give in my charge as soon as may be, if I have any to make against him; in consequence of which, their Lordships are pleased to direct, that if I have any thing to charge against the conduct of Sir Hugh Palliser, I do transmit the same to their Lordships.

I desire you will express to the Lords Commissioners of the Admiralty my great surprize at the contents of these letters: I learn, by another letter you have favoured me with of the same date, that Sir Hugh Palliser's attendance at the board has been dispensed with ever since he exhibited his charge against me. He appears to me, however, to think that he has lost no part of his weight and influence at the board, when he presumes to desire their Lordships to require me, in my present situation, to employ a thought about him, in any other character than as the author of that charge; and, for the present at least, I must be excused declining to give any other answer to your letter.

I am, Sir, your humble servant,

Ph. Stephens, Esq.

A. K.

S I R,

Admiralty-Office, 29th, Dec. 1778.

I HAVE laid before my Lords Commissioners of the Admiralty, your letter of the 26th instant, expressing your apprehensions that the enquiry into your conduct may be put off on account of the non-attendance of Capt. Windsor and Lieutenant Bertie, of his Majesty's late ship the Fox, which you fear may be productive of serious detriment to your country, by detaining so many other officers from the public service, and therefore repeating what you had written in a former letter, that, from the uncertainty of the return of those gentlemen to England, it is your wish not to have the court-martial put off on that account, I am commanded by their Lordships to acquaint you, that, in consequence thereof, the court-martial will be ordered to be held on the 7th of next month.

I am, Sir, your most obedient humble servant,

Hon. Admiral Keppel.

PH. STEPHENS.

By the Commissioners for executing the Office of Lord High Admiral of Great-Britain and Ireland, &c.

WHEREAS, by our order of this day's date, we have directed Sir Thomas Pye, Admiral of the White, and Commander in chief of his Majesty's ships and vessels at Portsmouth and Spithead, to assemble a court-martial on Thursday the 7th day of next month, to enquire into what is set forth in the charge which has been exhibited against you by Vice-Admiral Sir Hugh Palliser, and to try you for the same, provided the witnesses on your part and his shall then be ready, or if not, as soon afterwards as they shall be so; and whereas we have therefore thought it fitting, that you shall be suspended from your employment as Commander in Chief of a Squadron of his Majesty's ships employed and to be employed in the Channel, Soundings, or wherever else his Majesty's service shall require; you are hereby suspended

suspended from your said employment accordingly. Given under our hands the 31st day of December, 1778.

SANDWICH, J. BULLER, LISBURN.

To the Honble. Augustus Keppel, Admiral of the Blue, &c.

By Command of their Lordships, PH. STEPHENS.

S I R,

Admiralty-Office, Jan. 1, 1779.

MY Lords Commissioners of the Admiralty having by their order of yesterday's date, directed Vice-Admiral Sir Hugh Palliser to strike his flag and come on shore; I am commanded by their Lordships to acquaint you therewith, and have the honour to be, Sir,

your most humble servant,

Honble. Augustus Keppel.

PH. STEPHENS.

S I R,

Audley-Square, 2d Jan. 1779.

I AM unwilling to produce any inconveniencies to the public service, by desiring the Earl of Sandwich to attend the whole of my trial, which will probably run into great length. At the same time, I conceive his Lordship may be a material witness for me when I come to my defence; I therefore desire you will give him notice that I desire his attendance at the said trial, and that he will produce, on that occasion, all and every such letter and letters as were written to him by Vice-Admiral Sir Hugh Palliser, from the 27th of July, to the time of my sailing from Portsmouth the 23d of August last, that such may be called for as I may judge material.—I send this notice before the commencement of the trial, that no objection may be taken on that account; but, as I intimated before, I don't wish that Lord Sandwich should be detained at Portsmouth any longer than is necessary, and therefore I shall give him timely notice before I shall want to call him. I am, Sir, your most obedient humble servant,

Ph. Stephens, Esq.

A. KEPPEL.

S I R,

Audley-Square, 2d Jan. 1779.

THE Provost Marshal, who was directed by the Lords Commissioners of the Admiralty to take me into his custody, informed me, that, as their Lordships do not mean to give me unnecessary trouble, he was permitted to take my word of honour for my appearance at Portsmouth on the 7th of this month; I have given him my word of honour accordingly, and am this day setting out upon my journey thither, of which I desire you will inform their Lordships—

And likewise, I desire you will acquaint them, I beg to be informed whether the flag officers of the fleet who were commanding at the Nore, in the Downs, and at Plymouth, at the time their Lordships received the charge against me, have all of them been chosen by their Lordships to be at Portsmouth, in a situation to sit at my trial.

I am, Sir, your very humble servant,

Ph. Stephens, Esq.

A. KEPPEL.

S I R,

Portsmouth, 4th Jan. 1779.

I MADE an early application to the Lords Commissioners of the Admiralty, after being acquainted by Mr. Secretary Stephens, that their Lordships intended that a court-martial should be held for trying me on a charge of misconduct and neglect of duty, on the 27th and 28th of July last, exhibited against me by Vice-Admiral Sir Hugh Palliser, that the Captains of the King's ships serving in the fleet under my command, on the 27th of July, might be summoned, and likewise other officers; and since having notice given me, that the

S I R, *Audley-Square, Sunday Afternoon. 27th Dec. 1778.*

I HAVE to acknowledge the receipt of your letter of this day's date, inclosing a letter from Sir Hugh Palliser, acquainting the Lords Commissioners of the Admiralty, that as the witnesses will be assembled at my trial, he will be ready, as soon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, and desiring that their Lordships will be pleased to require me to give in my charge as soon as may be, if I have any to make against him; in consequence of which, their Lordships are pleased to direct, that if I have any thing to charge against the conduct of Sir Hugh Palliser, I do transmit the same to their Lordships.

I desire you will express to the Lords Commissioners of the Admiralty my great surprize at the contents of these letters: I learn, by another letter you have favoured me with of the same date, that Sir Hugh Palliser's attendance at the board has been dispensed with ever since he exhibited his charge against me. He appears to me, however, to think that he has lost no part of his weight and influence at the board, when he presumes to desire their Lordships to require me, in my present situation, to employ a thought about him, in any other character than as the author of that charge; and, for the present at least, I must be excused declining to give any other answer to your letter.

I am, Sir, your humble servant,

Ph. Stephens, Esq.

A. K.

S I R,

Admiralty-Office, 29th, Dec. 1778.

I HAVE laid before my Lords Commissioners of the Admiralty, your letter of the 26th instant, expressing your apprehensions that the enquiry into your conduct may be put off on account of the non-attendance of Capt. Windsor and Lieutenant Bertie, of his Majesty's late ship the Fox, which you fear may be productive of serious detriment to your country, by detaining so many other officers from the public service, and therefore repeating what you had written in a former letter, that, from the uncertainty of the return of those gentlemen to England, it is your wish not to have the court-martial put off on that account, I am commanded by their Lordships to acquaint you, that, in consequence thereof, the court-martial will be ordered to be held on the 7th of next month.

I am, Sir, your most obedient humble servant,

Hon. Admiral Keppel.

PH. STEPHENS.

By the Commissioners for executing the Office of Lord High Admiral of Great-Britain and Ireland, &c.

WHEREAS, by our order of this day's date, we have directed Sir Thomas Pye, Admiral of the White, and Commander in chief of his Majesty's ships and vessels at Portsmouth and Spithead, to assemble a court-martial on Thursday the 7th day of next month, to enquire into what is set forth in the chagre which has been exhibited against you by Vice-Admiral Sir Hugh Palliser, and to try you for the same, provided the witnesses on your part and his shall then be ready, or if not, as soon afterwards as they shall be so; and whereas we have therefore thought it fitting, that you shall be suspended from your employment as Commander in Chief of a Squadron of his Majesty's ships employed and to be employed in the Channel, Soundings, or wherever else his Majesty's service shall require; you are hereby suspended

suspended from your said employment accordingly. Given under our hands the 31st day of December, 1778.

SANDWICH, J. BULLER, LISBURN.

To the Honble. Augustus Keppel, Admiral of the Blue, &c.

By Command of their Lordships, PH. STEPHENS.

S I R,

Admiralty-Office, Jan. 1, 1779.

MY Lords Commissioners of the Admiralty having by their order of yesterday's date, directed Vice-Admiral Sir Hugh Palliser to strike his flag and come on shore; I am commanded by their Lordships to acquaint you therewith, and have the honour to be, Sir,

your most humble servant,

Honble. Augustus Keppel.

PH. STEPHENS.

S I R,

Audley-Square, 2d Jan. 1779.

I AM unwilling to produce any inconveniencies to the public service, by desiring the Earl of Sandwich to attend the whole of my trial, which will probably run into great length. At the same time, I conceive his Lordship may be a material witness for me when I come to my defence; I therefore desire you will give him notice that I desire his attendance at the said trial, and that he will produce, on that occasion, all and every such letter and letters as were written to him by Vice-Admiral Sir Hugh Palliser, from the 27th of July, to the time of my sailing from Portsmouth the 23^d of August last, that such may be called for as I may judge material.—I send this notice before the commencement of the trial, that no objection may be taken on that account; but, as I intimated before, I don't wish that Lord Sandwich should be detained at Portsmouth any longer than is necessary, and therefore I shall give him timely notice before I shall want to call him. I am, Sir, your most obedient humble servant,

Ph. Stephens, Esq.

A. KEPPEL.

S I R,

Audley-Square, 2d Jan. 1779.

THE Provost Marshal, who was directed by the Lords Commissioners of the Admiralty to take me into his custody, informed me, that, as their Lordships do not mean to give me unnecessary trouble, he was permitted to take my word of honour for my appearance at Portsmouth on the 7th of this month; I have given him my word of honour accordingly, and am this day setting out upon my journey thither, of which I desire you will inform their Lordships—

And likewise, I desire you will acquaint them, I beg to be informed whether the flag officers of the fleet who were commanding at the Nore, in the Downs, and at Plymouth, at the time their Lordships received the charge against me, have all of them been chosen by their Lordships to be at Portsmouth, in a situation to sit at my trial.

I am, Sir, your very humble servant,

Ph. Stephens, Esq.

A. KEPPEL.

S I R,

Portsmouth, 4th Jan. 1779.

I MADE an early application to the Lords Commissioners of the Admiralty, after being acquainted by Mr. Secretary Stephens, that their Lordships intended that a court-martial should be held for trying me on a charge of misconduct and neglect of duty, on the 27th and 28th of July last, exhibited against me by Vice-Admiral Sir Hugh Palliser, that the Captains of the King's ships serving in the fleet under my command, on the 27th of July, might be summoned, and likewise other officers; and since having notice given me, that the

court-martial is ordered to be assembled for my trial, on Thursday the 7th inst. and that you are to act as Judge Advocate at the said trial; I therefore think it proper to acquaint you, that I desire the witnesses whose names are inserted in the list that accompanies this, may be summoned to attend to give their evidence before the court. Others that occur to me, that I may have occasion to call for, I will transmit to you their names in time, as I may judge their evidence material or necessary.—You will observe in the list of witnesses, the names of the Hon. Capt. Windsor, and Lieut. Bertie, late of his Majesty's ship the *Fox*.—Mr. Secretary Stephens has acquainted me, in consequence of my application to the Lords Commissioners of the Admiralty, that they have desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for procuring their appearance at my trial.—Though the evidence of those gentlemen may be material, I have informed their Lordships, through Mr. Stephens, that should they not arrive by the day fixed for the assembling the court-martial, I do not desire it may be put off on that account; however, I shall be glad to know from you, Sir, the result of the measures taken for their return to England, and if they are likely to be here by the 7th instant.—I beg likewise to be informed if there is any objection to the Captains sitting as members of the court-martial to be held for my trial, who have been summoned as witnesses either by me or Sir Hugh Palliser.

I am, Sir, your very humble servant,
George Jackson, Esq; Judge Advocate. A. KEPPEL.

S I R,

Admiralty-Office, 4th Jan. 1779.

I THIS afternoon received, by the hands of Mr. Moore, your letter of the 2d instant, desiring me to give the Earl of Sandwich notice, that you desire his attendance at your trial; and that he will produce, on that occasion, all and every such letter and letters as were written to him by Vice-Admiral Sir Hugh Palliser from the 27th of July to the time of your sailing from Plymouth the 23d of August last, that such may be called for as you may judge material; and in return, I am to acquaint you, that I immediately communicated the same to his Lordship.—I am, Sir,

Your most obedient, and most humble servant,
Hon. Augustus Keppel. PH. STEPHENS.

S I R,

Portsmouth, 5th Jan. 1779.

I AM to acknowledge the receipt of the letter you yesterday honoured me with, inclosing a copy of one you had written to the Secretary of the Admiralty, desiring that the Earl of Sandwich might have notice to attend at your trial; and take leave to acquaint you, in return, that I last night wrote to his Lordship, to apprise him of your intention, agreeable to the request made in your said letter.—I am, with regard and consideration, Sir,

Your most faithful, and most obedient servant,
Hon. Admiral Keppel. GEO. JACKSON.

S I R,

Portsmouth, 5th Jan. 1779.

I HAD the honour of your letter of yesterday, inclosing a list of the names of witnesses whom you desire may be summoned to give evidence upon your trial, and shall not fail to give the necessary notices accordingly.—I could not, upon the questions you are pleased to put to me respecting the return to England of Capt. Windsor and Lieutenant Bertie, avoid referring myself to the Secretary of the Admiralty

Admiralty for information. I was set down to inform you I had taken that step, when luckily I received by a messenger a letter from him, in which he acquaints me that those gentlemen are arrived.

With regard to your other directions, whether witnesses may set as members of the Court-Martial, not conceiving myself to be fully competent on that matter, I beg to reserve myself till I have seen and talked with the President, which I shall endeavour to do as early this morning as I possibly can.—I am, with great regard and consideration, Sir,

Your most faithful, and most obedient servant,
Hon. Admiral Keppel, &c. GEO. JACKSON.

S I R,

Admiralty-Office, 4th Dec. 1775.

I HAVE communicated to my Lords Commissioners of the Admiralty your letter of the 2d instant, acquainting them, that you have given your word of honour to the Provost Marshal to be at Portsmouth on the 7th instant, at the Court-Martial to be held for your trial; you was about to set out for that place, and desiring to be informed, whether the flag officers who were commanding at the Nore, in the Downs, and at Plymouth, at the same time their Lordships received the charge against you, have all of them been chosen by their Lordships to be at Portsmouth in a situation to sit at your trial; and I am in return to acquaint you, that their Lordships have ordered the flag officers who were commanding at the above-mentioned places, at the time they received the charge against you, to repair immediately to Portsmouth, and hoist their flags.

I have the honour to be, Sir, your obedient, humble servant,
Hon. Admiral Keppel, Portsmouth. PH. STEPHENS.

S I R,

Admiralty-Office, 5th Jan. 1779.

HAVING laid before my Lords Commissioners of the Admiralty a letter from Mr. Josh. Sharpe, dated the first instant, desiring, on your behalf, and as your agent, that all the letters written by you to me, as Secretary of the Admiralty, from the time when you received your first instructions to the date of his said letter, may be produced at your trial, in order that such of them may be produced in evidence as you may think fit to call for; I have, in obedience to their Lordships' commands, ordered Mr. Robinson, one of my clerks, to attend at Portsmouth, on the 7th instant, with the said letters, accompanied with a schedule thereof, attested by me.

I am, with great regard, Sir, your most obedient humble servant,
Honble. Augustus Keppel, PH. STEPHENS.
Admiral of the Blue, Portsmouth.

S I R,

Portsmouth, Jan. 6, 1779.

IN answer to your letter proposing an exchange of list of witnesses with Sir Hugh Palliser, I have only to remind you of what I mentioned to you this morning, that I was determined to avoid every degree of intercourse with that gentleman, therefore beg to decline saying any thing upon that subject.

I am, Sir, your very humble servant,
Geo. Jackson, Esq. A. KEPPEL.

S I R,

Portsmouth, 9th Jan. 1779.

HEREWITH I send you, for the information of the court, three books of the sailing and fighting instructions, with the alterations
and

and additions I have made to them, and likewise three books of my additional signals and instructions.

I am, Sir, your most obedient humble servant,
Geo. Jackson, Esq; Judge Advocate. A. KEPPEL.

S I R, *Court-Room, Portsmouth, 18th Jan. 1779.*

REAR-ADMIRAL Roddam, one of the members of the court-martial; having been taken ill last night, and continuing much indisposed, which will prevent his doing any business to-day; the court, therefore, having thought it most adviseable to adjourn, and it stands adjourned till to-morrow morning at ten o'clock accordingly.

I am, with consideration, Sir, your most obedient,
and most humble servant, GEO. JACKSON.
The Honble. Admiral Augustus Keppel.

S I R, *Portsmouth, 18th Jan. 1779.*

I AM extremely sorry for Rear-Admiral Roddam's indisposition, which, in the judgment of the court, makes a sitting to adjourn necessary; I only submit to the judgment of the court, whether it is not adviseable that I should be present when the court assembles and adjourns, because in case of a criminal prosecution it may be objected, that nothing ought to be done in the absence of the prisoner.—If this should be the opinion of the court, I am ready and desirous to attend them immediately. I am Sir, your very humble servant,

To the Judge Advocate. A. KEPPEL,

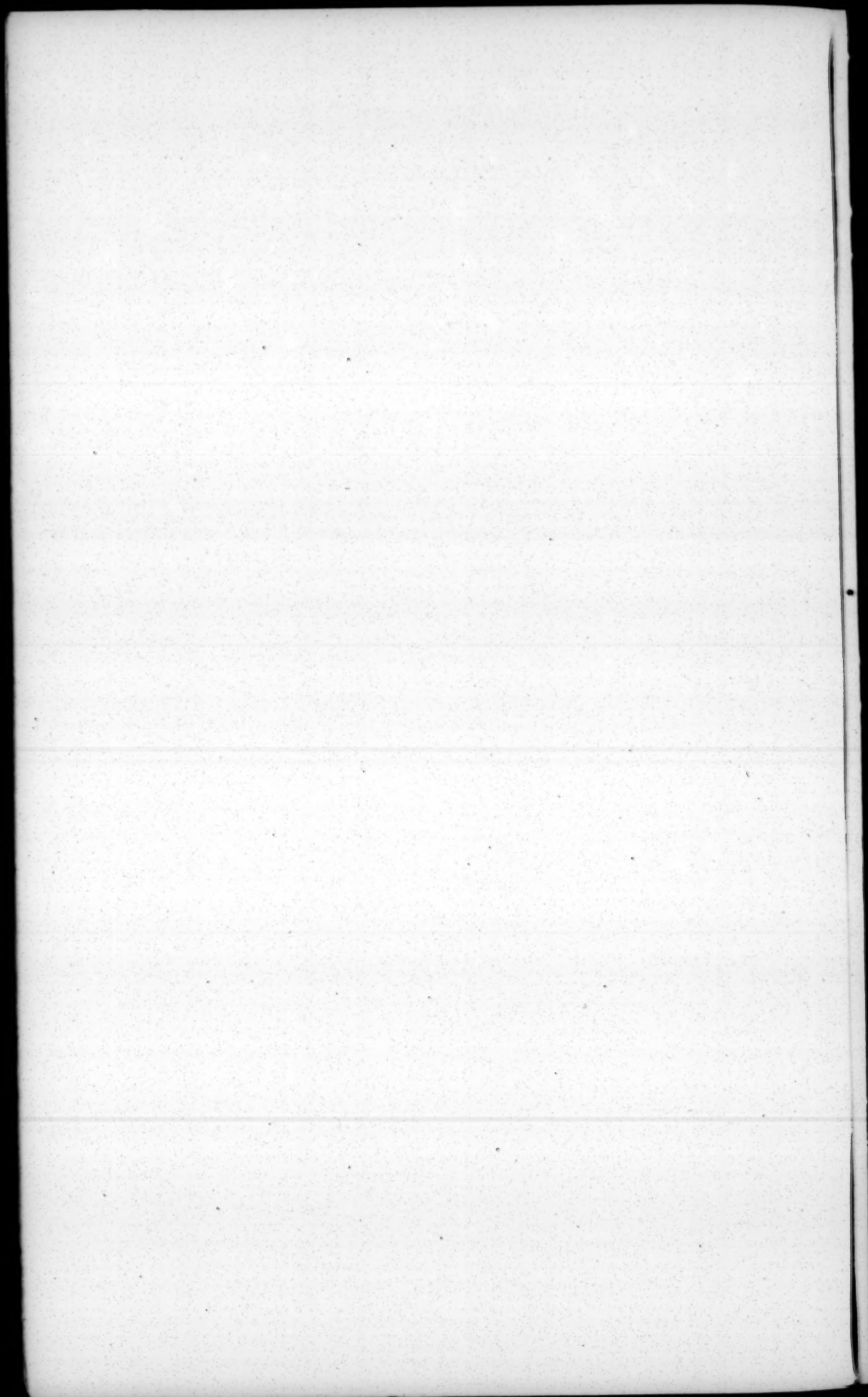
S I R, *Portsmouth, 13th Feb. 1779.*

I RECEIVED last night by a messenger an order from the Lords Commissioners of the Admiralty, dated yesterday, setting forth, that whereas the Judge Advocate of his Majesty's fleet had, in a letter of the 11th instant, transmitted to their Lordships the sentence of the court-martial, which has been held at Portsmouth for my trial, upon a charge exhibited against me by Vice-Admiral Sir Hugh Palliser, by which sentence I am unanimously and honourably acquitted of the several articles contained in the said charge; and that they do therefore thereby take off the suspension under which I was laid by their Lordships' order of the 31st of December last, and directing and requiring me to hoist my flag on board his Majesty's ship Victory, and to resume the employment of commander in chief of a Squadron of his Majesty's ships employed, and to be employed in the Channel, Soundings, or wherever else his Majesty's service may require. I have in consequence ordered Capt. Faulknor to cause my flag to be hoisted this morning on board the Victory, and have resumed the command of such ships of the Squadron that were under my orders, now at Spithead and Portsmouth harbour, that are not under any particular directions from their Lordships.—I received by the same messenger your letter signifying that their Lordships are pleased to give me leave of absence from my duty, to attend my private affairs, and likewise another letter of the same date.

I am, Sir, your most obedient and very humble servant,
Ph. Stephens, Esq. A. K.

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